

1 BEFORE THE ALPA ARBITRATION BOARD
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3 - - - - -X
4 THE CREW MEMBERS OF US :
5 AIRWAYS :
6 Plaintiff, :
7 vs. :
8 THE CREW MEMBERS OF :
9 AMERICA WEST AIRLINES :
10 Defendant. :
11 :
12 - - - - -X

14 HEARING, VOL IX

16 Washington, D. C.
17 Wednesday, January 10, 2007

20 REPORTED BY:
21 DONALD R. THACKER
22

1 Hearing before the ALPA Arbitration Board, on
2 Wednesday, January 10, 2007, in Washington, D. C. at

01-10-07ARBfinal
3 the Mayflower Hotel, 1127 Connecticut Avenue,
4 Northwest, at 10:00 a.m. before DONALD R. THACKER, a
5 Notary Public within and for the District of
6 Columbia, when were present on behalf of the
7 respective parties:

8

9 DANIEL M. KATZ, ESQ.

10 JASON WHITEMAN, ESQ.

11 Katz & Ranzman

12 5028 Wisconsin Avenue, Northwest, Suite 250

13 Washington, D.C. 22036

14 202-659-4656

15 danielmkatz@comcast.net

16 On behalf of US Airways

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-- continued --

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1 APPEARANCES (Continued):

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3 JEFFREY R. FREUND, ESQ.

4 LISA POWELL, ESQ.

5 Bredhoff & Kaiser, PLLC

6 805 15th Street, Northwest, Suite 1000

7 Washington, D.C. 20005

8 202-842-2600

01-10-07ARBfinal
jfreund@bredhoff.com

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On behalf of America West Airlines

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P R O C E E D I N G S

CHAIRMAN NICOLAU: When you are ready.

MR. KATZ: Yes, we have one preliminary
matter.

CHAIRMAN NICOLAU: Okay, gentlemen. On
the record or off?

MR. KATZ: We can do it off the record.

CHAIRMAN NICOLAU: Okay.

(Discussion off the record.)

CHAIRMAN NICOLAU: Okay, I think we are
ready.

MR. FREUND: Before I call our next
witness I just want to make an observation. Today
we are going to have to start with two witnesses,

15 one who is going to talk about from an inside
16 perspective, US Airways circumstances in the most
17 recent years of history, and in particular in its
18 second bankruptcy, and describe it, in detail what
19 the circumstances were.

20 And our witness following that will give
21 the panel a legal framework in which to assess Doug
22 Parker's statements to the pilots in January

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1 of 2006, after the transaction had already closed,
2 about the past, as opposed to the significance of
3 statements made before the transaction closed about
4 the condition of America West.

5 So, I say that as a predicate for what we
6 are going to do before I call our first witness, I
7 am not a big fan particularly of movies and videos
8 in arbitrations, and I am not all a big fan of the
9 offer arching relevance of anything that Mr. Parker
10 might have said after the transaction closed, when
11 he is talking to employees about the circumstances
12 that existed before the transaction.

13 That said, just so that we don't go
14 unheard on this point, we want to play you the audio
15 of three minutes of Mr. Parker after the transaction
16 talking to a group of mechanics at Charlotte, and we
17 will provide the panel, and of course the other
18 side, a complete DVD that has the entire portion,
19 his entire presentation.

20 We are not going to bore you with watching

21 it, we are not going to bore with you watching the
22 whole thing or listening to the whole thing and we

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1 are not going to burden the record with a
2 transcription of it. We don't think it is
3 particularly significant. We don't think it is any
4 more significant than we think his January 26th
5 brown bag statements are, but we thought you ought
6 to hear it.

7 CHAIRMAN NICOLAU: As long as the other
8 side has a transcript of the entire --

9 MR. FREUND: We are going to give them a
10 DVD of the entire --

11 CHAIRMAN NICOLAU: Because they may want
12 to put something in besides what you do.

13 MR. FREUND: Will give them and you a DVD
14 of the entire presentation. Okay, cue the tape.

15 MR. KATZ: There is no transcript?

16 MR. FREUND: No, we haven't transcribed
17 it.

18 CHAIRMAN NICOLAU: But we are playing it
19 now.

20 (Audiotape played, not reported.)

21 MR. KATZ: Could we stop just for a
22 minute?

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1 MR. FREUND: Yes.
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2 MR. KATZ: I need to caucus with my
3 committee.

4 (10:07 a.m. -- recess -- 10:09 a.m.)

5 MR. KATZ: I am sorry for the
6 interruption. We don't have any objection.

7 CHAIRMAN NICOLAU: Okay.

8 MR. FREUND: Cue it from the top.

9 (Audio played, not reported.)

10 MR. FREUND: We will provide a DVD of that
11 entire presentation.

12 CHAIRMAN NICOLAU: Okay.

13 MR. FREUND: With that I would call Ed
14 Albert.

15 Whereupon,

16 RAYMOND E. ALBERT
17 was called as a witness and, having first been duly
18 sworn, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. FREUND:

21 Q Would you state your name, please.

22 A Ed Albert.

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1 Q Ed, where are you presently employed?

2 A Milestone Merchant Bank, Merchant
3 Partners.

4 Q Could you tell us a little bit about what
5 Milestone Merchant Partners is?

6 A It is a typical boutique investment bank.
7 We have about 20 some, 20 some odd employees. The

8 bank itself and its principals have executed,
9 outside of my previous work, I joined the bank about
10 a year ago, but about \$17 billion of transactions
11 which include capital raising for companies, mostly
12 in mergers and acquisitions, where the firm is
13 retained to sell companies to another company.

14 And about a third of the work at Milestone
15 over the last five years has been in the airline
16 industry working with the Delta pilot group,
17 Hawaiian pilot group, American, and some of this
18 predates me, so I may have my grouping incorrect,
19 but working with various representing unions in
20 negotiations with company, with about a third of the
21 work over the last five years.

22 Q Have you prepared a packet of materials to

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1 accompany your testimony today?

2 A I have.

3 Q Let's turn to Exhibit 3 in the exhibit
4 book, please, and it looks to me as though that is
5 your resume; is that right?

6 A It is.

7 Q Could you walk us through your education
8 and post education employment history up until
9 today?

10 A Sure. I received an undergraduate degree
11 in marketing from Rowan University in southern
12 New Jersey, then went directly to University of
13 Maryland business school where I received an MBA in

14 finance.

15 I then went to work for the CFO of
16 Marriott International in their financial planning
17 analysis group, about a year there. I left that
18 with the senior vice president of finance to start a
19 corporate finance consulting practice down in
20 Dallas, and we were an entity that actually worked
21 with CEOs and their management teams of large public
22 companies, Kimberley Clark, Pier One, Columbia

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1 Health Care, to kind of think of a few, to help them
2 work on their -- work with them on their transaction
3 strategy without being investment bankers.

4 So that kind of concept was completely
5 objective, nontransactional feature of advice. And
6 we would have about three or four of those sessions
7 with CEOs and their management teams with public
8 companies every week for a few years.

9 I left there to, not the firm Ernst &
10 Young, but to join their corporate finance practice
11 and start a restructuring practice in 2000, and have
12 been doing bankruptcy and large corporate
13 restructuring work ever since that point in time;
14 was hired with a team at what was then Ernst & Young
15 corporate finance to be the financial advisor to the
16 unsecured creditors of U.S. Air in 2002.

17 Q That was the first bankruptcy?

18 A In the first bankruptcy.

19 Q Right?

20 A And then I was actually hired as the lead
21 individual advisor, financial advisor to the
22 creditors committee on the second bankruptcy in 2004

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1 for U.S. Air, as well as hired as the lead to the
2 creditors committee of Independence Air.

3 That was about also, actually at Giuliani
4 and at Ernst, the predecessor to Ernst & Young,
5 about a third to half of my time. The rest of the
6 time was on other capital market transactions,
7 mostly bankruptcies, advising banks, creditors, bond
8 holders on the viability of companies that they had,
9 they were stakeholders in, and what their best path
10 was, whether that was reorganization of the company,
11 sale of the company or liquidation of the company.

12 Just would start out by doing diligence
13 and giving them their prospects and then working
14 from there to determine what the best outcome would
15 be.

16 U.S. Air is a typical role, we probably --
17 I lived out at the company, I was the day-to-day guy
18 on the ground in the first case, so I was holed up
19 there with Dave Davis and Neal Cohen, David Segal
20 and their whole staff, as they worked through their
21 models and the plan and kind of right in the middle
22 of all that in my role, so that I could come back

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1 and report to the creditors' committee.

2 Q Did you have that same role in that second
3 bankruptcy?

4 A I did, except for the fact that on the
5 first bankruptcy I was, we had probably eight people
6 working on it, and I was the number three bankruptcy
7 person and in the second bankruptcy I was the lead
8 on the engagement.

9 Q Have you ever been called upon to testify
10 as an expert witness in any proceeding?

11 A I have.

12 Q Could you tell us about that please?

13 A Sure. In the Masaba case I have been,
14 since at Milestone, I have represented the pilot
15 group at Delta, as well as this group and then also
16 at Masaba.

17 And on Masaba I was qualified as an expert
18 and testified as to the viability of the Masaba
19 business plan, and sort of what profitability was
20 required in that plan to attract investors and how
21 that related to their employee expense net labor
22 agreement.

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1 Q In that capacity were you qualified as an
2 expert in corporate restructuring and in particular
3 airline corporate restructuring?

4 A I was.

5 MR. FREUND: I would proffer Mr. Albert as

6 an expert in this proceeding.

7 MR. KATZ: No objection.

8 BY MR. FREUND:

9 Q Ed, I am going to ask you during the
10 course of your presentation to go through the slides
11 that you prepared that sit behind Tab 4, and as well
12 I am going to be just asking you to identify a
13 couple of documents, in particular those that sit
14 behind tab 5, 6 and 7.

15 But before going through your slides on an
16 individual basis, are you here today to offer
17 opinions on two subjects, in particular the
18 financial or the viability on a stand alone basis of
19 US Airways at the time of the second bankruptcy, and
20 the liquidity posture of America West as of May
21 of 2005?

22 A Yes.

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1 Q Why don't you start by just giving us your
2 opinions and then we will go, we will get to the
3 heart of those opinions?

4 MR. KATZ: Let me make one objection to
5 the exhibits first. I think out of force of habit
6 Mr. Albert has stamped confidential on everything.

7 THE WITNESS: I realized that.

8 MR. KATZ: And I don't think we want to
9 deal with confidential exhibits. I don't think
10 really means them to be confidential, because once
11 they are here they are open to the public as far as

12 pilots are concerned.

13 THE WITNESS: It was unintentional.

14 MR. KATZ: I figured.

15 MR. FREUND: With that caveat, can you
16 give us --

17 THE WITNESS: The first page is not, the
18 title page --

19 MR. KATZ: No, you didn't write mark the
20 first, the title or your CV.

21 THE WITNESS: Figured that was good
22 advertising okay.

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1 And just, you know, as the back drop of
2 this is my testimony is very narrowly focused and is
3 based on the experience that I had as part of the
4 two creditors committees with U.S. Air, and to a
5 lesser extent through my analysis of America West,
6 as the result of the merger. So that is sort of the
7 scope of where this comes from.

8 And I think, you know, to start out, the
9 overall premise to this is that U.S. Air had been
10 struggling, and as Bob Mann spent a lot of time, I
11 am going to try not to be repetitive at all, for a
12 long time before the first bankruptcy, you know,
13 actually even before the failed merger with United,
14 through the first bankruptcy, which as a
15 professional in the case, when someone says it is
16 rushed, I don't think anyone would really disagree.

17 The main focus of Jack Butler and John

18 Luth and everyone at Seabury, everyone would tell
19 you was, the airline needed to come out of
20 bankruptcy as quickly as possible. That was the
21 focus, otherwise there would be a loss of corporate
22 customers and customer confidence in the airline.

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1 And from the creditors committee
2 perspective, the view was that committee wanted that
3 entity to continue, because if it was going to
4 liquidate there was not only no monetary value for
5 the committee members, but there was no customer;
6 whether they were going to create jobs or whether
7 that be Sky Chefs to provide food or GE to provide
8 engines.

9 So the thought was if this liquidates we
10 get nothing. If it continues and goes forward, even
11 maybe if it is not a perfect plan, that gives us a
12 better option. That was sort of the kind of
13 preface, the quick summary of what really happened
14 there.

15 I am going to really go through most of
16 this timeline in detail.

17 Q You are looking at --

18 A On page 2.

19 Q -- on page 2?

20 A On page 2, I will run through it quickly
21 here because I think it does help put some things in
22 perspective.

1 In March 2001 the US Airways CEO said U.S.
2 was not viable as a stand alone carrier, and we had
3 that comment on the phone. The Justice Department
4 rejected the merger in July '01.

5 In August of '02 U.S. Air filed for its
6 first bankruptcy. In August 2002 Texas Pacific
7 Group, who was a key player in the airline industry
8 in financing airlines, and I will talk about that a
9 little bit more later, made an offer to purchase a
10 38 percent stake.

11 The Honorable Dr. Bonner from RSA decided
12 that the Retirement System of Alabama would like to
13 own the airline and made a competing bid.

14 Things looked pretty rosy at that point.
15 U.S. Air accepted that bid, that \$240 million of
16 exit financing in conjunction with other financing.
17 Most importantly the ATSB loan allowed them to
18 emerge rather quickly from bankruptcy. A year, and
19 18 months later they filed for their second
20 bankruptcy. And importantly the ATSB allowed there
21 is a cash collateral in order that U.S. Air is able
22 to use the cash from the ATSB loan, in the

1 traditional sense in the beginning of the airline
2 case.

3 Five months later, with great effort the
4 first potential equity sponsor shows up, which is

5 Eastshore Aviation, which agrees to provide and does
6 provide \$125 million in equity financing, which it
7 does contingent on several key provisions which we
8 will discuss. The month after Republic Airlines
9 agreed to provide \$125 million. In May 2005 the
10 America West merger is announced, it is approved in
11 July.

12 Q So that is the overview. Let's turn to
13 slide 3 to start a more precise discussion of what
14 you have just given us in an overview?

15 A Okay, on slide 3 which basically stands on
16 its own, I will read it quickly. It is from an
17 oversight committee hearing in March of 2001, where
18 Steven Wolf says that US Airways is not viable as a
19 stand alone carrier. They do not have the financial
20 resources to become a network carrier and cannot
21 reposition itself as a low cost carrier, regardless
22 of bankruptcy or multiple bankruptcies, which he

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1 proved to have a lot of foresight with that
2 statement, actually.

3 He suggested a merger with United Airlines
4 as the only option for preserving services and jobs,
5 which I guess he was actually wrong about at that
6 point.

7 The point of the slide really is that
8 these troubles began long before this point in time
9 that we are talking about.

10 Q So the merger with United is basically not

11 approved by Justice Department; is that correct?

12 A That is right.

13 Q And then turning to slide 4, what does
14 this add to the --

15 A Well, slide 4, I don't think there is much
16 disagreement about, why they filed the second time.
17 I spent a little bit of time on --

18 Q This is the first time?

19 A I am sorry, the first time. I don't think
20 there is too much disagreement on the environment,
21 the LCC competition that they faced and were facing,
22 to a lesser extent than in the second case,

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1 relatively high equipment costs, market rates had
2 come down from new planes and used planes and U.S.
3 Air started paying above market rates at the time,
4 had more equipment than it needed, relatively higher
5 total labor costs relative to the industry.

6 When I say declining seasonal revenues,
7 the reason airlines tend to file bankruptcy in the
8 fall is because you build cash over the summers, as
9 you all know, and that is the time to do it, so you
10 have the most cash, and their cash flow was actually
11 declining even through the summer months, which is
12 unusual.

13 And they decided to file Chapter 11; their
14 plan to emerge was largely based on reducing labor
15 and equipment costs, renegotiating leases, rejecting
16 leases, improving their labor costs, their

17 negotiations with their unions, and possibly most
18 importantly, increasing the use of regional jets
19 which were viewed to be more cost efficient and
20 would act as feeders to their main line system.

21 That was the plan everyone bought off on,
22 and wasn't perfect but everyone sort of crossed

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1 their fingers and hoped for the best.

2 Q Turning to slide 5, I think you may have
3 covered what is the -- you may have covered what is
4 contained in slide 5 in your previous comments, but
5 why don't you just take a look at that and tell us
6 perhaps with a little more particularity what the
7 nature of that plan was.

8 A Well, slide 5, and I think a lot of it was
9 covered by Mr. Mann, just highlights the importance
10 of the RJ fleet to the restructuring. They had
11 about 70 regional jets and expected to end up with
12 north of 400 regional jets.

13 I probably spent untold hours with John
14 Luth at Seabury and explained the strategy of the
15 regional jets and how important it was for the
16 viability of this regional carrier, and the ability
17 of regional jets to over fly hubs.

18 One of the big problems that you have in
19 the hub in Charlotte, as an example, is someone can
20 fly 70 or 90 seat regional jet from New York to the
21 Caribbean while you are actually flying through your
22 hub with the main lines. So the idea of having

1 smaller planes, it doesn't require as many people on
2 it and that you can fly directly point-to-point more
3 readily.

4 So you know, the only real point of this
5 slide is that that was a key part of their potential
6 remember restructuring was to increase the use of
7 regional jets. And the relevance to that is that
8 the result of the second bankruptcy, the financing
9 for these planes, not having that available.

10 Q We will come to the second bankruptcy
11 obviously in due course, but turning to slide 6, you
12 mentioned in your overview first Texas Pacific Group
13 and later the Retirement System of Alabama
14 participation in bankruptcy one. Does slide 6 set
15 out in a little more detail those players in the
16 bankruptcy?

17 A It does.

18 Q All right, tell us, why don't we begin by
19 you describing the first offer of equity investment
20 in the company in bankruptcy one by Texas Pacific
21 and in particular who Texas Pacific was?

22 A Well, Texas Pacific Group, I think this

1 may be important to highlight one other entity which
2 is not here, which is the Seabury Group, which is

3 headed by John Luth, who is an ex-Continental exec,
4 I believe, had a history with TPG from the first
5 America West, actually not the first but the only
6 America West filing in the early '90s, 1992 or '93,
7 and Seabury group is the advisor to U.S. Air in the
8 first bankruptcy.

9 So the relationship that they had, and the
10 success that they had with the reorganization of
11 America West in the early '90s and the relationship
12 with Texas Pacific Group made them an obvious fit to
13 work together on U.S. Air. So I think that is sort
14 of important in understanding the relationship.

15 Texas Pacific Group today is a \$30 billion
16 fund. There are several funds. I don't know
17 exactly how much money they had at this time, but it
18 was significant.

19 The main focus of the funds are to invest
20 in turnaround situations. It is very opportunistic.
21 They tend not to buy a lot of things that are
22 running on all eight cylinders but find troubled

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1 situations and capitalize on them. That is their
2 general theme. There may be some investments that
3 don't fit into that.

4 Having been investors in Ryanair,
5 Continental and America West it made sense for them
6 to look at this deal. John Luth convinced them to
7 take a look. They agreed to put \$200 million in,
8 make a \$200 million investment for Luth, which would

9 be exit financing in the deal.

10 The assumption was there to be additional
11 financing to get them through the bankruptcy and
12 additional equity financing from some source, but
13 that they would put \$200 million in for a 38 percent
14 stake.

15 Q Let me stop you for a second. You
16 mentioned Ryanair, Continental and America West. In
17 sort of broad brush, chainsaw math terms how did
18 Pacific Group do from this investment in those --

19 A I do not know Ryanair. I know these were
20 all successful investments. I know it was a large
21 multiple of their original investment. The exit
22 involved America West but I couldn't tell you the

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1 exact dollars out there, and all were successful and
2 multiple returns.

3 Q Is it fair to say in your view that they
4 not just on abroad brush basis, but particularly
5 with the focus on the airline industry, they are
6 experienced and savvy airline industry investors?

7 A Absolutely.

8 Q I interrupted you.

9 A So TPG agrees that upon emergence they
10 value a 38 percent stake at \$200 million which would
11 imply a valuation of a little more than \$500 million
12 for the enterprise upon emergence, effectively.

13 Retirement Systems of Alabama and Dr.
14 Bonner helped TPG in their desire to own an airline

15 and they have different investment objectives than
16 necessarily a purely financial investment. There
17 was a lot of drive to create jobs in Alabama. That
18 is sort of one of their main focuses, and was
19 willing to outbid Texas Pacific Group's economics.

20 Part of the reason that they were brought
21 in was because Texas Pacific Group was losing
22 interest as they did their diligence in the airline.

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1 In my opinion it was not clear to them what the
2 value would be upon emergence and whether there
3 could be a successful reorganization.

4 Q And that is a point I want to stop you
5 with for a moment, that the original Texas Pacific
6 Group \$200 million offer, I take it, was contingent
7 on --

8 A Diligence.

9 Q -- diligence and US Airways getting a
10 number of hurdles prior to closing?

11 A Yes.

12 Q Okay.

13 A So RSA assumed those same contingencies,
14 diligence, and the same similar hurdles to make
15 their investment. They had a 37 percent stake, it
16 was actually a bid for 38, but when it was closed
17 the math happened to work out to 37 percent, there
18 are some decimals in here, and a controlling
19 interest for US Airways for \$240 million.

20 Q I take it Texas Pacific Group did not

21 match or exceed that bid?

22 A They did not, which is interesting in and

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1 of itself, given their success in the prior airline
2 bankruptcy. So there was really sort of a question
3 of valuation and likelihood of success for them to
4 be outbid by \$40 million. This is a fund today that
5 is \$30 billion, so that is not a major investment
6 for them.

7 So that is sort of the framework of the
8 exit financing from an equity perspective. The real
9 backbone of the financing package was the ATSB which
10 we are all familiar with, which was set up to help
11 carriers survive the shocks from 9-11. They provide
12 a government guarantee for loans that were generally
13 funded from, the government was the guarantor as
14 opposed to the lender, for a billion dollars.

15 That financing package in conjunction with
16 the reduced labor costs, reduced fleet costs,
17 reduced leasing costs, as well as absolute numbers
18 of planes and other concessions from vendors,
19 allowed them to get the support from RSA and from
20 the creditors committee and other constituents to
21 emerge within six months from the filing.

22 I think it is somewhat interesting to note

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1 that the ATSB providing that loan guarantee

2 unquestionably made that financing cheaper than
3 could have been available otherwise. There is also
4 another question, which is could you have gotten
5 financing at all? And I don't have a direct opinion
6 on that today. But I would say that it is
7 questionable whether or not financing could have
8 been raised without a guarantee.

9 Q So US Airways emerges in March of 2003; is
10 that correct?

11 A That is correct.

12 Q And turning to the next slide, what
13 happens subsequent to emergence?

14 A I guess one last point on the first
15 bankruptcy, in 2002, there was not a lot of -- there
16 was some concern as there is in of bankruptcy that
17 this could be the end, that you could liquidate, but
18 not significant in terms.

19 It was peripheral because of the strong
20 support of RSA up front and the ATSB. There was
21 general comfort that this airline was going to
22 emerge and not a lot of time spent on an unlikely

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1 Liquidation.

2 So we fast forward to September 2004.

3 Q We are now looking at slide 7?

4 A Slide 7, and things looked very much the
5 same. LCC competition, however, has now increased
6 dramatically. Southwest Airlines has targeted
7 Philadelphia. That was not part of any group

8 planning discussion or competitive discussion I had,
9 the possibility with executives at U.S. Air. We
10 knew the possibility always existed but it certainly
11 was not expected to be of significant impact.

12 Independence Air had launched in the
13 summer of 2004, which was the carrier for United,
14 with fares for 19.95 flying out of Dulles, which was
15 probably, not probably, absolutely impacted US
16 Airways more than any other carrier flying short
17 haul on the east coast out of Dulles.

18 Fuel prices rising, there is still over
19 capacity in the industry. It is interesting what
20 effectively happened is that as the airline industry
21 recovered from 2001 capacity came back on so quickly
22 that was taken out, that we ended up in an over

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1 capacity again; the airline filed bankruptcy for the
2 second time.

3 At this time Embraer and Bombardier
4 cancelled their financing for the regional jets as
5 well as the GECAS agreement was affected as well,
6 and the plan for reorganizing around an RJ fleet is
7 now called into question.

8 Q What do your bar graphs show us on this
9 page?

10 A Well, the bar graphs show that between the
11 time they emerged in March 2003 and had about a
12 billion two of cash, which was comprised mostly in
13 monies fungible, but mostly from the ATSB loan as

14 well as the investment from RSA.

15 That cash balance by September of 2004 was
16 down to \$677 million. They had burned through about
17 \$600 million in the 18 months. This is after
18 restructuring, this is after reducing their labor
19 costs, reducing their fleet costs, and rationalizing
20 their hubs.

21 On the right-hand side, this is sort of
22 the driver of the declining cash, is that the

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1 earnings for the first quarter of 2003, which are
2 actually, first quarter of 2003 is not a great
3 quarter to look at because there is a lot of noise
4 as a result of the emergence from bankruptcy. And
5 we have taken some attempt to adjust for that but I
6 would actually submit that it is, there is so much
7 noise in that quarter it is not relevant.

8 But as you can see the second quarter of
9 2003 there is a small profit followed by three
10 straight quarters of losses, a small profit in the
11 second quarter of '05, and another large loss in the
12 third quarter of '04, so the airline --

13 Q You said second quarter of '05, you meant
14 second quarter of '04?

15 A Second quarter of '04, I did.

16 So the point of these charts is that even
17 after their restructuring and cost reductions they
18 continued to burn cash for 18 months between the two
19 bankruptcies.

20 Q Turning now to slide 8, what period are we
21 looking at -- well, again just to make a continuum,
22 slide 7 shows the periods first quarter 2003 through

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1 third quarter 2004. I take it slide 5 picks up
2 where the prior slides left off?

3 A Slide 8.

4 Q Slide 8, I am sorry.

5 A And the point of slide 7, this is their
6 cash flow between the two bankruptcies, after their
7 restructuring. The point of slide 8 is this is
8 their cash flow while they have the benefit of
9 bankruptcy protection.

10 We use a different format not really for
11 any reason. It could just as easily have been bars.
12 But the message here is that even during the
13 protection of the second bankruptcy, after we
14 renegotiated our labor costs I think at this point,
15 well, twice, we have renegotiated our fleet and
16 leases twice, we have gotten rid of our additional
17 planes and we have gone back to our vendors, and
18 even with the bankruptcy and the ability to reduce
19 all the costs, we are still burning significant cash
20 in bankruptcy.

21 Now, outside -- inside and outside the
22 airline industry in my experience with bankruptcies

1617

1 is that it is very unlikely that you have a
2 successful reorganization if you are continuing to
3 burn cash sort of six to nine months into a
4 bankruptcy. It is kind of a sign that, it is a sure
5 sign that you don't just have a balance sheet
6 problem, you don't just have too much debt, you have
7 an operations problem. There is something
8 fundamentally wrong with your business that has to
9 be fixed, and it can be fixed, and companies can
10 come out after burning cash through bankruptcy and
11 begin to generate it, but it is not the normal cycle
12 for successful reorganizations where there is a
13 fundamentally sound operating business.

14 Q I take it that the information provided
15 here in slide 8 was information that was provided by
16 you and others on a regular basis to the US Airways
17 unsecured creditors committee during the bankruptcy?

18 A All of this information comes from monthly
19 operating reports. We presented them information,
20 whether or not it was in the exact same format and
21 we were focusing, I think most of our presentations
22 to the creditors committee were more focused on

1618

1 cash, absolute cash.

2 Every report which came in here is the
3 balance, here is what we burned, but similar
4 message, may have been a different format.

5 Q And the US Airways pilots were represented

6 on that creditors committee, correct?

7 A Yes.

8 MR. KATZ: Let me just clarify something
9 here, because I am not sure between the question and
10 the answer what the status of this is.

11 Information that was presented to the
12 creditors committee was all confidential
13 information, and unless there has been some kind of
14 a waiver granted US Airways --

15 THE WITNESS: We haven't used anything. I
16 have been very sensitive to not using any
17 information presented to the creditors information.

18 MR. KATZ: That is what I wanted to
19 clarify. This is not information that has been
20 presented to the creditors --

21 MR. FREUND: This slide has not been
22 presented to the creditors committee.

1619

1 THE WITNESS: The information was public.

2 MR. FREUND: Okay.

3 THE WITNESS: Monthly operating reports.

4 MR. KATZ: That was in public data that
5 was filed on the docket in the bankruptcy court in
6 Alexandria. That is public information. So just to
7 clarify, we are not asking the witness for
8 information that was presented to the creditors
9 committee.

10 MR. FREUND: Well, my last question on the
11 floor was, was the creditors committee provided with

12 information regarding the cash burn of US Airways
13 during the course of the bankruptcy. That is the
14 question that is on the floor.

15 MR. KATZ: Well, I guess I think anything
16 that was presented by Giuliani to the creditors
17 committee is subject to the confidentiality
18 agreement.

19 MR. FREUND: I am just asking whether --

20 CHAIRMAN NICOLAU: He is not asking, he is
21 just asking yes or no. He is not asking what the
22 details are.

1620

1 MR. KATZ: I want to make sure that it is
2 clear that we are not participating in a breach of
3 the confidentiality agreement that we agreed to in
4 that procedure.

5 THE WITNESS: I want to make a statement
6 for the record, that I was ultrasensitive to not
7 presenting one piece of data in this that came from
8 that. Insofar as I actually did not review my
9 presentations from Giuliani, there may have been
10 one, to review to remember how the Republic deal was
11 structured, but I actually didn't want, I wanted no
12 issues whatsoever.

13 So everything that is in here that is
14 presented is public. I think there is maybe one
15 exception, which we will get back to, which was
16 actually provided directly to this group, as part of
17 this proceeding, which is --

18 CHAIRMAN NICOLAU: This group meaning --

19 MR. FREUND: US Airways --

20 THE WITNESS: The Barbell model which was
21 shared with the creditors committee on multiple
22 occasions was also shared with this group as part of

1621

1 this proceeding. That is the only, I think,
2 nonpublic piece of information in here.

3 MR. KATZ: Well, that is exactly what I
4 wanted to clarify and wanted to make sure of,
5 because it puts us in an awkward situation. If we
6 were to have evidence that was from the creditors
7 committee, it would be very awkward to go back and
8 ask to have the confidentiality restrictions lifted
9 so that we could respond.

10 But as long as we are on the stuff that
11 is, it is public information, I have got no problem
12 with this issue. Just flag for us please, when we
13 get to the document that has some kind of a special
14 category.

15 THE WITNESS: Very well.

16 CHAIRMAN NICOLAU: The witness understands
17 your concern, so let's go.

18 BY MR. FREUND:

19 Q So my question --

20 CHAIRMAN NICOLAU: The answer was yes.

21 BY MR. FREUND:

22 Q I think the answer was yes, if you

1 remember what the question was.

2 And sitting to your right is Kim Snyder.
3 Was he the US Airways pilots representative on the
4 creditors committee?

5 A Yes.

6 Q Turning to slide No. 9, does this follow
7 on from slide number 8?

8 A It does. Again these are -- this is
9 effectively the result, slide 8 is that you were
10 burning cash from operations, slide 9 is sort of the
11 result of that, what did what did your cash balance
12 look like?

13 You know, I have gone through from the
14 monthly operating reports through September, and the
15 cash declined from \$791 million at close to the time
16 of filing down to \$334 million in September '05; to
17 the right-hand side, there has been a lot of focus
18 in this case on how does cash relate to days of
19 operating cash coverage, so we have presented that
20 here as well.

21 And then with Bob Mann, in his testimony
22 went beyond September and took cash to the deal

1 closing date where it was down to around five days
2 of operating cash coverage, at the time of the
3 transaction, which highlights sort of the immediate
4 need to get something done and infuse liquidity.

5 Just a couple of things that I would point
6 out is that the cash balance on the left is a
7 declined from \$791 million to 334, there was no debt
8 financing in this second case so there is not a
9 benefit from that, because as they were able to draw
10 on the cash collateral from the ATSB loan.

11 It does, however, have the proceeds from
12 the Air Wisconsin investment, which I don't recall
13 and could not find it publicly exactly the time
14 period that those proceeds came in but it was in the
15 spring of 2005.

16 So when you look at these numbers in May
17 and June and July and August they benefit from the
18 investment from Air Wisconsin that was put in, as
19 well as at some point in time -- I will stop there,
20 because I am not positive whether the assets sale
21 money is reflected here or not.

22 Q So we are going to talk about the Air

1624

1 Wisconsin piece in a bit, but if I forget to ask you
2 to go back and look at slide 9 again and repeat what
3 you said after we understand what the Air Wisconsin
4 investment was --

5 A Sure.

6 Q -- you will remember to do that on your
7 own, right?

8 A Absolutely.

9 Q What was the view of the investment
10 community of the prospects for US Airways during the

11 course of the second bankruptcy?

12 A There is a few quotes on slide 10 that are
13 not unique to these two analysts, Raymond James and
14 BB&T. They were Raymond James had the view that
15 they expected, it wasn't a question of if they
16 liquidated, it was how long it might take to
17 liquidate. They made the statement that in their
18 view it was sooner than later, for that is worth.

19 BB&T was mostly focused on the benefits to
20 Southwest of the U.S. Air liquidation and reiterated
21 that in several different reports.

22 And there are other analysts as well, but

1625

1 the general tenor was that the financial community
2 was concerned that there may be a liquidation.

3 In my opinion, from an outsider's
4 perspective, if I was analyzing this business and
5 saw the cash declining to the level that it was
6 during a bankruptcy, having all the benefits of that
7 protection I would have the same view.

8 Q Not only with analysts, not only did
9 analysts have that view but let's turn to slide 11.

10 A This is a quote from Bruce Lakefield that,
11 you know, after the fact or just before the merger
12 where Bruce Lakefield said, "There were times when
13 we felt we would not be able to stay in business for
14 more than a few weeks, but we did, and what we have
15 now is far more than what we could have hoped for."

16 Q Now, turning to slide 12, you mentioned

17 both in your overview and just a moment ago a couple
18 of investments that found their way into US Airways
19 during the time of the bankruptcy. And in their
20 testimony and in their case the US Airways pilots
21 have relied heavily on these two investments as a
22 measure of US Airways garnering and putting together

1626

1 a combination of investments which would have
2 allowed it to emerge from bankruptcy on a stand
3 alone basis.

4 I am not going to ask you about that last
5 point just yet, but rather I would first like you to
6 explain through the slides that we are about to look
7 at what those two investments were?

8 A Sure, and I am going to go out of order
9 here. If we can start with, just to be
10 chronological, if we start with slide 13, which is
11 titled Eastshore Aviation-Air Wisconsin investment.

12 Eastshore Aviation, it is important when
13 you think about money coming into a circumstance
14 like this what the person's motivation is. Someone
15 like a Texas Pacific Group, their motivation is an
16 economic return, pure and simple on that investment.
17 They may have another investment that they would
18 like to merge it together with, but they are
19 completely motivated by the return on that
20 investment specifically.

21 In Air Wisconsin, Eastshore Aviation and
22 Air Wisconsin's case they were in danger of having

1 their jet services agreement rejected in the United
2 bankruptcy case. The majority of their planes were
3 being flown at United, and as a carrier for a large
4 airline, if you lose that services agreement in a
5 bankruptcy literally without warning there is very
6 little ability to employ those people and those
7 planes and those other assets quickly. And you can
8 only surmise for yourself what would happen to you
9 if the majority of your fleet was grounded.

10 Those airplane payments keep coming in and
11 there is labor, the payroll keeps coming in and you
12 would not be long for the world if you were to lose
13 your services agreement.

14 Actually Independence Air may be one of
15 the best examples of that. They tried to save
16 themselves and had a huge cash war chest but were
17 unable to do that. So Eastshore was very concerned.
18 If we lose these 70 planes where are we going to put
19 them?

20 Q You don't mean if you lose the 70 planes,
21 if you lose, if they lost the ability to fly those
22 for United?

1 A Right, if you lose the ability to be paid
2 for flying those 70 planes.

3 So Air Wisconsin is sitting there saying,
4 thinking -- well, I won't testify as to what they
5 are thinking.

6 In my view Air Wisconsin looks at U.S. Air
7 as a logical place. They want to increase their
8 regional jet flying. It is now going to have to be
9 done by third parties as opposed to wholly-owned
10 affiliates because of the financing problems that we
11 discussed earlier.

12 So air Wisconsin is a logical party to fly
13 for U.S. Air, and they make a bet. They make a bet
14 that if we put \$125 million in this, this is my
15 opinion, into this company, that increases the
16 likelihood of its surviving and we have a place to
17 fly our 70 planes which was the quid pro quo for the
18 investment.

19 So they are not a typical financially
20 motivated investor here. If they can make money on
21 their equity investment, great, but this is a
22 payment as an option to be able to continue to exist

1629

1 for this carrier. So it is different from someone
2 else looking at a pure financial return on
3 investment.

4 Q And that, when you were telling us earlier
5 about the cash burn, that was reflected in slide --

6 A 9.

7 Q -- yes, slides 8 and 9, that \$125 million
8 is money that came into the estate at some point

9 during the course of the time period reflected in
10 earlier slides?

11 A Not on slide 8. 8 is only from
12 operations, so actually it would not be reflected.

13 Q Right, I am sorry.

14 A Slide 9, somewhere in these, you know,
15 March, April, May, June, July, August, somewhere in
16 these numbers, certainly by the end, reflects the
17 influx of this Air Wisconsin money.

18 Q Okay, this was not, in other words --

19 A It was not exit money.

20 Q It was not exit financing, right.

21 So that was, you had us go out of order
22 13, so now let's go back to slide 12?

1630

1 A Back to slide 12, Republic airways who
2 also has a jet servicing agreement to fly planes for
3 U.S. Air, so they also have their own interest to
4 protect here and their own interest in U.S. Air
5 surviving, agrees to provide \$125 million equity
6 investment and \$110 million in cash for the purchase
7 of some assets. They purchased 10 U.S. Air Embraer
8 170s, they amended their jet servicing agreement,
9 they obtained the spare parts and tools for those
10 planes as well as 137 commuter slots at Washington
11 Reagan and La Guardia because you all know they are
12 slotted airports, and those slots are valuable
13 without question.

14 They also have the ability to assume

15 leases on 15 Embraer 170s not owned by U.S. Air but
16 leased, but this is again a package deal to help
17 provide support they are flying planes for, and also
18 this asset purchase agreement for these --
19 theoretically negotiated separately of \$110 million
20 of value for these other assets but this is
21 renegotiated and presented as one deal.

22 Also important is this \$125 million equity

1631

1 investment, it is contingent on their approval of
2 the business plan, which they did not have at this
3 point, and additional \$100 million coming from
4 another party, not Eastshore or Air Wisconsin.

5 So they are in effect saying, we are
6 willing to put some money in your business, it helps
7 us. We would love to have some of these assets, we
8 will buy the assets, but we are not going to make
9 the equity investment until somebody else signs off
10 on this business plan as well, someone besides us
11 and Air Wisconsin.

12 Now, that person never came prior to the
13 merger announcement. There was no announcement of
14 another interested equity party, and we will get
15 into that a little bit more on slide 14. But it is
16 a key point that the requirement for that \$125
17 million to come in was never satisfied prior to the
18 merger announcement.

19 Q So slide forward then to slide 14.

20 A Just to go over the backdrop again, you

21 have analysts expressing doubt whether the carrier
22 would survive, saying its best prospects were

1632

1 finding a merger deal or selling itself off in
2 pieces.

3 And then on May 19th the merger is
4 announced, and it is based on -- and there are lots
5 of different parts of liquidity that is coming in
6 once the merger is announced, but of key pieces are
7 the equity financing of \$565 million.

8 There is also vendor support, there is
9 also a lot of other pieces that has come in
10 conjunction with the merger, but what I want to show
11 here is that Republic, which is in the footnotes,
12 since those dollars never came in which was at U.S.
13 Air's choice ultimately after the merger was
14 announced, they decided that they did not need that
15 money.

16 The only money that came in to the company
17 prior to this merger announcement which wasn't based
18 on the merger was Eastshore, \$125 million which
19 clearly was not enough nor this airline to
20 successfully emerge. It was still burning cash and
21 down to several hundred million dollars cash for a
22 large airline.

1633

1 So in conjunction with the merger
Page 39

2 announcement Par Investment Partners stepped up for
3 purely, this is an investment fund, Peninsula steps
4 up, Ace Aviation which is Air Canada, you may argue
5 that part was related, but certainly financially
6 driven as well; Wellington Management and Tudor come
7 up with \$440 million to be provided for equity
8 financing contingent on the successful merger.

9 Q So, to be clear, prior to the merger there
10 was not, I take it there was not interest in
11 external investment investors?

12 MR. KATZ: We are going to object --

13 BY MR. FREUND:

14 Q There is an objection, we will rephrase
15 the question.

16 Was there an investment prior to the
17 merger, investment interest by outside investors
18 sufficient to fund US Airways stand alone plan --

19 A I don't know the whole world of outside
20 investors. Seabury was in that role. I can't say
21 whether there was any interest or not but I can say
22 that there was none announced.

1634

1 Q Did the creditors committee -- was the
2 creditors committee ever presented with a business
3 planning for a stand alone US Airways operation that
4 the creditors committee and you as its financial
5 advisor deemed was workable?

6 MR. KATZ: I am going to object to that
7 question. It calls for confidential information

8 from the creditors committee to be revealed in this
9 proceeding.

10 MR. FREUND: I don't think it does.

11 CHAIRMAN NICOLAU: No, I think it is just
12 whether it was presented. Am I right?

13 MR. FREUND: Correct.

14 THE WITNESS: So, the question is, did I
15 in my role as advisor to the committee, see a
16 business plan that we had, that we supported that
17 the committee supported that made sense?

18 MR. FREUND: Correct.

19 MR. KATZ: Yes, that is what I am
20 objecting to. I mean if he says that there wasn't,
21 in order to cross-examine him I have to ask him
22 about all the things that the Giuliani firm did

1635

1 evaluate for the creditors committee.

2 MR. FREUND: I don't really think that is
3 required in order to cross-examine. It is a very
4 simple question, was there one which creditors
5 committee concluded --

6 MR. KATZ: I also object --

7 MR. FREUND: Let me finish the
8 observation. The question is, was there a plan that
9 the creditors committee saw that was a viable stand
10 alone plan for US Airways? And that is the
11 question, and I don't think that reveals anything
12 confidential, and I don't think it requires the
13 review or any questions about confidential material

14 at all. It is a very simple question with a very
15 simple answer.

16 MR. KATZ: Well, it is a simple question
17 but simple questions often call for more than simple
18 answers. And in this case, in addition to the
19 problem of delving into the confidential business of
20 the creditors committee, which is forbidden by the
21 ground rules bylaws of the creditors committee, it
22 is basically irrelevant to this proceeding, what the

1636

1 creditors committee had before it or didn't have
2 before it.

3 It seems to me that whatever the America
4 West merger committee wants to prove in this case
5 about what happened in the US Airways bankruptcy
6 case, it can do so with documents that were filed on
7 the docket of the bankruptcy court in Alexandria.

8 And we will stipulate that there was not a
9 plan, formal plan of reorganization that was filed
10 US Airways to emerge from bankruptcy other than the
11 plan that didn't also involve the merger.

12 MR. FREUND: I stand by what I said. I
13 don't think that my question calls for the
14 disclosure of any confidential information nor does
15 it require cross-examination with --

16 THE WITNESS: I will --

17 CHAIRMAN NICOLAU: Well --

18 THE WITNESS: I will tell you this. Based
19 on just what is here, none of this is from the

20 creditors committee, so it is stipulated that is no
21 plan of reorganization for a stand alone, the
22 analyst committee believes that liquidation was

1637

1 possible and independently just as a financial
2 investment banker to look at a company that is
3 burning as much money as they did during the process
4 that is not reversing direction, I would question
5 your ability to have a successful operating model.

6 MR. KATZ: I just don't think we need to
7 get into the creditors committee business as to what
8 was presented, what was evaluated. There were a lot
9 of documents that were passed out in the creditors
10 committee and you can call them plans, you can call
11 them something else, I just think all of that should
12 be off limits.

13 CHAIRMAN NICOLAU: Well, the way the
14 question was asked could open the door in a way that
15 we don't want the door opened, but you know, I think
16 the initial question is, was a stand alone
17 reorganization plan submitted to the creditors
18 committee.

19 THE WITNESS: POR or business plan.

20 CHAIRMAN NICOLAU: It is a business plan
21 isn't it.

22 BY MR. FREUND:

1638

1 Q Well, we will do them piece by piece. Was
2 a stand alone plan of reorganization ever submitted
3 to the creditors committee?

4 A No.

5 Q Well, was a viable stand alone business
6 plan ever presented to the creditors committee?

7 MR. KATZ: That is where I am going to
8 object. I mean this was transformation plan 1.2,
9 2.6, all of that stuff --

10 THE WITNESS: I think that is confidential
11 that there was made.

12 MR. BRUCIA: That makes your point.

13 CHAIRMAN NICOLAU: That is the problem
14 with the second question, you know. The issue of
15 viability and you get into all kinds of stuff. So I
16 don't, you know, in terms of the confidentiality of
17 the creditors committee, I don't think there should
18 be an answer to that question.

19 BY MR. FREUND:

20 Q So let me ask the question outside of the
21 creditors committee. In your view as a financial
22 analyst and an expert in restructuring and airline

1639

1 restructuring in particular, was there in your view
2 an ability to finance a stand alone viable business
3 plan for US Airways?

4 A You know, unfortunately I don't think I
5 could answer that without having seen the internal

6 documents, without seeing, as a complete outsider,
7 to have a view without seeing a business plan and
8 all the associated assumptions would be difficult.
9 So --

10 CHAIRMAN NICOLAU: Okay.

11 BY MR. FREUND:

12 Q Fair enough. We are going to switch over
13 to America West --

14 A Just to reiterate one last time, the fact
15 that there is no money and there is no announced
16 investment prior to a merger with America West, I
17 believe that stands on its own, as far as support.

18 CHAIRMAN NICOLAU: Now that we are
19 switching to another airline we are taking a break.

20 MR. FREUND: That is what I was going to
21 suggest.

22 (11:07 a.m. -- recess -- 11:35 a.m.)

1640

1 MR. FREUND: Ready to go?

2 CHAIRMAN NICOLAU: Yes.

3 BY MR. FREUND:

4 Q Ed, we left off finishing your description
5 of the status of US Airways as of May 19th. Let's
6 turn the slide 15, change the subject, and move over
7 to America West's condition and circumstances, in
8 particular with respect to its liquidity position in
9 early 2005. I guess with that we should look at
10 slide 15?

11 A Okay. So we talked about U.S. Air and

12 kind of their track record, and I think Bob Mann
13 gave adequate sort of air time to America West, and
14 they had been in, had a nice steady upward trend
15 since their emergence from bankruptcy in 1993 or 4.
16 I may be off by a year there, so I just mostly
17 focused on where is America West at the time of the
18 merger announcement, because clearly U.S. Air needs
19 something drastic to happen, so where is America
20 West.

21 And a few quotes I think, you know, having
22 them from other people as opposed to me, Doug Parker

1641

1 says, "We released our first-quarter results this
2 morning and I will tell you that given the industry
3 environment, we are extremely pleased with these
4 results. Our revenue for ASM was up 7.8 percent.
5 We believe that will be the best you're going to see
6 from any airline that reports earnings, certainly of
7 any major airline that reports this quarter."

8 So, Doug Parker feels pretty good about
9 the first quarter from an operational perspective.
10 Then he goes on to say, "Our cash is holding up
11 well. We were able to reduce our debt by nearly \$90
12 million in the quarter and still maintain total cash
13 balances of nearly \$350 million, which is a good bit
14 higher than we had indicated where we thought we
15 would be on our last call. And we expect a modest
16 buildup of cash as we move through the second
17 quarter."

18 Q What do you see down below those quotes?

19 A Down below on the left is just the revenue
20 from the first quarter to the second quarter. And
21 admittedly it is a little exaggerated by scale on
22 left, it showed \$723 million of revenue in the first

1642

1 quarter, \$833 in the second quarter. You would
2 expect that, just from seasonality that you would
3 have a better second quarter than the first quarter.

4 The point of these two charts is that he
5 felt good at the end of the first quarter. Revenue
6 was improved as you would expect it to. And more
7 importantly, their cash balance is improved and
8 their total cash, which he talks about, has gone
9 from 345 million at the end of the first quarter to
10 414 million at the end of the second quarter.

11 Now, I as a banker and analyst, actually
12 am focused more on spendable cash. A good chunk of
13 the cash he refers to is restricted, whether that is
14 credit card processors, hold back which is probably
15 the majority of it, whatever it may be, the point is
16 there was really \$234 million of liquidity from cash
17 perspective, and in the second quarter of '05 that
18 234 grows to \$322 million.

19 Q Just to make sure we have got everything
20 placed properly in time, the quotes that you have
21 depicted on the top of slide 15 refer to the quarter
22 that is reflected as the first quarter in the charts

1 below; is that right?

2 A That is right. All of the comments come
3 from the first quarter earnings call, and you know,
4 my main objective of the slide is to show that he,
5 Doug Parker, felt things were good at the end of the
6 first quarter, and things got better in the second
7 quarter. So that is the intent of the slide.

8 Q Before we leave that slide I would just
9 ask you to flip to tab 5 for just one moment, and is
10 that the transcript of the analyst conference from
11 which you extracted the quotes that are on slide 15
12 as well as some of the other slides?

13 A It is, some subsequent slides, it is.

14 Q Just to put sort of a pin in a couple of
15 other exhibits, take a look the tab 6. Is that the
16 form 8K filed in connection with this analysis
17 report or the release of the first quarter earnings
18 report?

19 A Yes, it is.

20 Q And finally, tab 7, is that the 10Q that
21 actually is the SEC filing more precisely reflecting
22 the first quarter results?

1 A Yes.

2 Q Now, tell us, it may well be that
3 everybody in the room understands what these analyst
4 conferences and analyst calls are all about, but why

5 don't you tell us in general terms what they are,
6 just so the record is clear?

7 A Well, these analyst calls are held from
8 the management basically to gain support from the
9 analyst community to promote the stock, to -- the
10 main objective is to communicate their performance
11 in hopes of finding investor support for your
12 company, for your stocks, but most importantly in
13 today's environment is, to tell the truth, give an
14 honest picture of where your business is. I think
15 there is a lot less selling since Sarbanes-Oxley and
16 a lot more, a lot more facts presented in these
17 calls.

18 Q We will be hearing more about
19 Sarbanes-Oxley later in the day, but with that as a
20 predicate let's flip to slide 16.

21 A Slide 16 is just a continuation of the
22 quotes from 15, from the conference call and it

1645

1 makes a little bit, expands a little bit and says --

2 Q Is from the conference call or from the
3 10Q?

4 A From the 10Q, from the 10Q, same time
5 period, for the first quarter. The holdings as of
6 March 31st, 2005 holdings restricted and
7 unrestricted --

8 CHAIRMAN NICOLAU: I don't think he
9 necessarily needs to read the whole thing into the
10 record we have it in front of us.

11 THE WITNESS: Fair. The key points of
12 this quote, "Although there can be no assurances, we
13 believe that cash flows from operating activities,
14 combined with these cash balances and our financing
15 commitments, will be adequate to fund our operating
16 and capital needs as well as to maintain compliance
17 with our various debt agreements through at least
18 December 31st, 2005."

19 Now, what that means to me, and consistent
20 with our analysis is that, and we will get this to
21 America West in a minute, although America West was
22 doing well operationally, there was a potential

1646

1 balance sheet issue, which is the maturity of the
2 ATSB loan, and the fact they had an almost
3 \$86 million a year payment on their ATSB loan.

4 The relevance to the statement is that is
5 they feel comfortable servicing that for at least
6 another nine months at this point in time, which is
7 a lot of time to evaluate options for that agreement
8 as well as other alternatives. So is not an
9 imminent sense of urgency, that is the point.

10 BY MR. FREUND:

11 Q Then turning to slide 17?

12 A Slide 17 I won't read anything here. They
13 are just more comments from Scott Kirby, who is the
14 EVP of sales and marketing discussing the fact that
15 their performance has been improving. You will note
16 there are some typos in here, it is because we took

17 it straight from the transcription. So it is from
18 the original transcripts as well. But the slides
19 came from that and just talks about that operating
20 performance and gaining momentum on that same
21 conference call.

22 Q I would like you, when you turn to slide

1647

1 18, I would like you to perhaps read a couple of the
2 key sentences from there because -- well, you can
3 tell us what the significance of Mr. Parker's
4 observations are.

5 A Well, the key to this slide and this quote
6 is again, as I said, clearly America West is
7 improving from an operational perspective and more
8 rapidly than the industry but the issue is your
9 operations could be great, if your balance sheet
10 doesn't work, if you are overloaded with debt you
11 could still end up in trouble.

12 So he directly addresses in this quote the
13 fact that they have alternatives, and I think starts
14 out saying we are not losing any sleep over
15 liquidity here. The fact of the matter is if the
16 environment stays like it is and we do no financing
17 whatsoever, we believe, our own prediction
18 indicates, that we will have ample cash at year-end.

19 Having said that I doubt that is the
20 scenario that plays out. My own guess is if the
21 industry stays in the current environment that we
22 will go back and raise some more financing. And

1 results like we produced today gives me ample
2 confidence we would be able to do that.

3 It may be refinancing, as we mentioned the
4 ATSB, and that may be part of what happens, but the
5 fact of the matter is airlines that are producing
6 results that are this much better than the rest of
7 the industry don't generally find themselves in
8 liquidity issues, and I imagine that will be the
9 case here.

10 It is not my expertise to talk about sort
11 of what his responsibilities are for making
12 statements like this. I believe the next witness
13 will address that.

14 Q How do Mr. Parker's observations -- strike
15 that and go back a bit.

16 Just to remember that the time frame we
17 are talking about this was a statement that was made
18 after the first quarter results?

19 A Yes.

20 Q And I think you showed us that the second
21 quarter results were improved even from this
22 condition of the first quarter?

1 A From the most important aspect which is
2 the cash balance.

3 Q How do Mr. Parker's comments after the
4 first quarter results about the prospects, about the
5 company's liquidity position and the company's
6 prospect of refinancing debt if necessary, square
7 with your views as an expert in this field?

8 A I agree completely. As I spent some time,
9 I think we will spend a significant amount every
10 time on the following slide.

11 Q Okay, let's turn to slide 19.

12 A We will get into the details of exactly
13 the impact of the ATSB loan payments coming due at
14 America West, on a subsequent slide but what I, what
15 this slide depicts is the capital market appetite
16 for raising equity during the time period in
17 question and sort of what was America West's ability
18 to raise capital?

19 If you look at different earlier time
20 periods in 01-02, you know, it is difficult to raise
21 capital. In this time period starting in December
22 of, I am sorry, rather starting in February of '05,

1650

1 through December of '05, the capital markets were
2 really warming up to the turn around in the industry
3 and to anticipating what we are now seeing today in
4 2006, which is yields improving well in excess of
5 fuel costs, and the capital markets were willing to
6 provide capital. So I want to spend some time
7 explaining exactly what this says.

8 Q Okay.

9 A Republic Airways, we will start at the
10 bottom actually, with Southwest, they raised \$298
11 million of non-convertible debt. At the time that
12 they raised that money February of '05, as an
13 investor the only information you may have had a
14 glimpse, the most recent information you would be
15 able to use for making that investment decision
16 would be December 31st, '04, possibly, you know, a
17 little bit farther back, maybe September of '04.

18 So, if you look at Southwest's performance
19 through 12-31-04, their EBITDAR margin, which is
20 earnings before interest taxes depreciation and
21 rents was 17.8 percent. The significance of EBITDAR
22 in the airline industry is that is your capital that

1651

1 your operations generate that allow to you make rent
2 payments on your planes, that allow to you make
3 interest payment on planes that you own, that allow
4 you to service your debt and that allow to you pay
5 your taxes.

6 And also the reason that it is before
7 depreciation and amortization, is this is really a
8 measure of how much cash do I have to pay my rent,
9 my interest and to fund the capital expenditures of
10 my business going forward which offsets your
11 depreciating assets.

12 So that is why the EBITDAR margin is used.

13 EBITDA, which is earnings before interest
14 taxes depreciation and rent is used in most other

15 industries, the reason you look at EBITDAR in this
16 industry --

17 Q I think you said EBITDA you included rent
18 in their but --

19 A Well, EBITDAR includes rent, that is what
20 is used in the airline industry. EBITDA is not.
21 And the reason that you look at EBITDAR in the
22 airline industry is to put everyone on a level

1652

1 playing field. When you look at their margins it is
2 irrespective of how they have chosen to finance
3 their planes; whether they own them or rent them or
4 lease them, it puts everyone on the same playing
5 field and so that point, it is that important.

6 Southwest had a 17.8 percent EBITDAR
7 margin. If you look north of that, Republic Airways
8 had a much stronger margin of 36 percent, what you
9 would expect for the regional carrier. And then AMR
10 American, Continental had EBITDAR margins between 9
11 and 10 percent. So reasonable but not excessively
12 strong.

13 So where is America West in all of this?
14 I mean clearly you need a strong operating margin to
15 service your debt, and America West is well ahead of
16 Continental and American and below Southwest. So it
17 falls in the middle. Certainly in the range of
18 where people would be looking for profitability to
19 be where it is at.

20 The second aspect, and there is many

21 different things you look at, these are the two
22 fundamental drivers and everything is generally

1653

1 related to them.

2 If you have a lot of EBITDAR, you have a
3 lot of cash, but you also have a mountain of debt,
4 it may or may not be a good thing. You need to look
5 at your cash relative to your debt that you have to
6 service.

7 Similar to having a mortgage. You can
8 think about EBITDAR as your net income and your debt
9 is as your mortgage. In that scenario the lower
10 your ratio of your debt to your income the better
11 off you are.

12 In this case Republic Airways has about
13 six times debt to EBITDAR, so if they had a hundred
14 million of EBITDAR they have 600 million of debt.

15 Southwest has very little low leverage at
16 just one and a half times debt to EBITDAR. American
17 and Continental are roughly 10 times debt to
18 EBITDAR. And at the time of the merger announcement
19 roughly, I have used the trailing 12 months through
20 June '05, America West had about 7-1/2 times debt to
21 EBITDAR.

22 So they had a stronger balance sheet or

1654

1 stronger leverage ratio than American and

2 Continental, better margin than American and
3 Continental, both of those airlines were able to
4 raise common stock. And one last piece of
5 significance to this, is the common stockholders are
6 the last guys to get paid, as we all know.

7 So, it is even better that they are able
8 to raise stock and that they are able to raise debt
9 which might be secured or even unsecured, but at
10 least comes before equity holders.

11 So the point is the capital markets have
12 gotten so strong for airlines at this point not only
13 can you finance planes and have secured and
14 unsecured debt, people are actually ready to buy
15 into your equity and, you know, leads one to
16 conclude that they do not believe they will be
17 headed into bankruptcy.

18 Q And with that as background let's turn to
19 slide 20 and take a look at America West cash flows?

20 A Slide 20 takes some explanation, it is a
21 busy slide. What I wanted to do here was show
22 America West's internal projections, and the best

1655

1 snapshot we had was despite the 25 TP3 versions that
2 Dan and I talked about before, we were provided, as
3 Milestone, was provided as a result of this process
4 by America West a version of the Barbell model. So,
5 I didn't choose the most attractive or unattractive
6 one. We only have one for this case. It was
7 provided by America West.

8 Q I think we have, we had a little
9 discussion yesterday about what Barbell was but just
10 so that everybody is on the same page?

11 A Project Barbell, again, Seabury is the
12 advisor to U.S. Air and they were the advisor in the
13 merger, so Seabury in conjunction with the
14 management team about built the model that showed
15 America West as a stand alone had it's own business
16 and what its projections looked like.

17 U.S. Air stand alone and its projections,
18 and then the two combined with the benefit of the
19 synergies. It is a huge model. I chose to focus on
20 the output of the model which is where would your
21 cash be.

22 And the top chart here shows the

1656

1 projections for America West stand alone if it had
2 to repay the ATSB loan. And there's a whole set of
3 assumptions that go into the model, about many, many
4 different things. And clearly, when you look at
5 this, at this one snapshot --

6 MR. KATZ: Excuse me, before you go into
7 talking about it let me just ask a question or two
8 on voir dire, because we didn't get a copy of the
9 document from the company or anywhere, that you
10 apparently did.

11 VOIR DIRE EXAMINATION

12 BY MR. KATZ:

13 Q Did you get this directly from U.S. Air
Page 58

14 management?

15 A I personally did not.

16 Q You got it from the committee?

17 A No.

18 Q Where did you get it from?

19 A To be clear, I joined Milestone in January
20 of this year, I am sorry, not of this year, of 2006,
21 we are in a whole new year. I joined them in
22 January of 2006. There was information provided to

1657

1 Milestone from America West prior to my arrival
2 there. So my understanding is that this model came
3 straight from CFO or someone in the CFO's office at
4 America West.

5 MR. KATZ: Jeff, you are shaking your
6 head. Do you want to enlighten us --

7 MR. FREUND: All I am saying is that is
8 our understanding as well, that the America West
9 committee had the Seabury report, Seabury analysis
10 from the company.

11 BY MR. KATZ:

12 Q Okay, and in terms of the two pages here,
13 20 and 21, I take it this isn't the form in which
14 Milestone received it.

15 A No.

16 Q You or someone in your office took the
17 data and arranged it in this format?

18 A Well, in this format, but on the top it
19 was unaltered, straight from, this is just the

20 output of that model.

21 Q Where it says America West stand alone
22 projection including repayment of ATSB loan?

1658

1 A Yes, that is just their base case that
2 they show for America West stand alone.

3 Q Then the part below that America West
4 stand alone projections excluding repayment, you
5 have done that calculation to remove the ATSB
6 guaranteed loan projection?

7 A Right. I can explain that in detail.

8 Q You will do that on direct examination. I
9 just wanted to find out about the document and how
10 it is constructed at this time.

11 The second page of that, is that just the
12 same story?

13 A It is just a depiction of that data, it is
14 no new information.

15 Q It is just a bar chart of the information
16 on the table that came from the America West merger
17 committee?

18 A Yes, on the left. It is a bar chart of
19 the table, and on the right it is the alteration for
20 the ATSB loan.

21 Q Do you have any idea why Seabury was doing
22 an analysis of America West when Seabury was the

1659

1 advisor to US Airways?

2 THE WITNESS: Am I allowed to answer this
3 question?

4 MR. FREUND: Yes, if you know.

5 BY MR. KATZ:

6 Q I am just trying to find out --

7 A Yes, Seabury had to model both businesses
8 separately to determine what the combined business
9 would look like. They were the lead in the analysis
10 of what do these two things look like put together.
11 So they had to model both sides, stand alone.

12 And then the exercise for a banker, any
13 banker, is to show that these two things will
14 benefit from being put together, and the only way
15 you can know that is to see them separate and then
16 put together.

17 Q So as part of that task your understanding
18 is that Seabury created the top half of page 20 to
19 perform that function?

20 A Yes, and that as a fact, yes. It is not
21 my understanding. They did prepare this document
22 that results in the top. It is their model.

1660

1 MR. KATZ: Okay, that is all I have on
2 voir dire.

3 DIRECT EXAMINATION (Resumed)

4 BY MR. FREUND:

5 Q Turning back now to slide 20, in the

6 course of Dan's voir dire you came close to
7 explaining the entire document but why don't you do
8 that in sort of a more structured way?

9 A I think what is important here it has
10 already been entered into the record that there are
11 many, many different versions and iterations of
12 this. This is just the one that was provided by
13 America West. It showed, based on the projections
14 developed with Seabury, that their cash would end
15 2005 at \$178 million, '06 \$105, '07, \$64 and '08,
16 \$28.

17 Q Negative --

18 A Negative \$28 million, and in reality you
19 have a cash problem long before you have negative
20 \$28 million.

21 So it is interesting to note that in
22 reality if you look at year end 2005 for America

1661

1 West, their numbers are still reported separately
2 today. Year end 2005 they actually ended up with
3 \$500 million of cash, irrespective of the investment
4 that came as a result of the merger. So, I didn't
5 feel that the relevance was to show what, to me the
6 relevance is, well, what was there outlook at the
7 time.

8 So I haven't doctored these. I haven't
9 tried to make them look better. They are what they
10 are. And you know, it shows that their cash from
11 operations is positive, 57 million in '05, 116

12 million in '06, 129 million in '07 and 195 million
13 in 2008. Our view is that they were relatively --
14 they were solid projections. Didn't feel like the
15 operating activities were overly optimistic or
16 overly pessimistic. It seemed reasonable to us in
17 our analysis.

18 So the key is the company is generating
19 positive cash from operations. The reason that your
20 cash is declining is that within the cash flow
21 financing activities line you are paying \$86 million
22 a year back to the ATSB, and that is what is causing

1662

1 your decline in cash.

2 Q Those are the principal payments back --

3 A Are the principal payments due in March
4 and September, \$43 million March and September.

5 So the chart below is the same thing, and
6 you will notice the cash from operating activities
7 is identical, cash from investing activities is
8 identical. We have not changed that at all. The
9 only thing we have done is taken out the ATSB
10 principal repayments in the line cash flow from
11 financing activities, so you will notice for 2005 on
12 the top chart cash from financing activities is 125
13 million negative, and in the chart on the bottom it
14 is only 82 million negative.

15 And that is because of at the time of the
16 analysis, I haven't stripped the whole year out, I
17 haven't added back the whole year because March had

18 been made, and that is part of when Doug Parker said
19 we have paid down 90 million that is part of what he
20 is referring to.

21 So I can only, to be fair, add back the
22 September payment. That is the payment that if you

1663

1 went to the ATSB and said look we are generating
2 positive results relative to the industry, we are
3 generating cash from operations, this fuel thing is
4 killing us, we can pay interest on your loan, but we
5 need to stretch those amortization payments. That
6 is, this is what it might look like.

7 Alternatively, given the position of the
8 capital markets you may have chosen to replace the
9 ATSB. It would never be your first desire because
10 the ATSB is the guarantee and it is a cheaper cost
11 of financing. But this is what it would like look
12 like if you could convince the ATSB to defer
13 amortization completely, and maybe you only
14 partially defer it, this is from one extreme to the
15 other. To be fair and realistic if you didn't pay
16 the ATSB loan you would have more interest than is
17 in their model. So we have added some additional
18 interest that would be paid.

19 Which I guess should -- it would be
20 helpful if it was depicted as a negative number.
21 But the idea is that the extra interest is deducted
22 from the cash balance.

1 Q And the point of this series of slides
2 starting back from slide 15 through 20, with respect
3 to America West's ability to have maintained its
4 liquidity, is in your opinion what?

5 A I think they have a lot of options at this
6 point, and clearly there is a liquidity issue
7 looming. It is not an immediate crisis in any way,
8 shape, or form, and as I said. In fact, the
9 operating results improved significantly and in
10 reality there was much more cash than this. In
11 reality you never would have had to refinance the
12 ATSB loan, but at this point in time it looked like
13 you might have to.

14 So your options were go beg the ATSB, and
15 you had a great case to make. Find someone to
16 replace the ATSB, you could raise equity as other
17 airlines were doing, or wait, sit tight and hope
18 your operations improve enough to pay it, which
19 actually happened.

20 But that is great now with the benefit of
21 hindsight. That is why I have stuck to the time
22 period of the merger looking forward, which are the

1 least favorable numbers available.

2 Q Let's just look at slide 21, which I think
3 doesn't add anything to the analysis but --

4 A I want to stay on 20 for one minute.

5 Q Okay?

6 A I just want to point out that the
7 liquidity numbers, if you deferred the ATSB loan at
8 the bottom, of 220 million, 227, 261, 237, those are
9 very close to the 234 at the end of the first
10 quarter when Doug Parker said we are not losing any
11 sleep over liquidity here.

12 It is also important to note that these
13 are year end cash balances. That is either your end
14 of your 4th quarter or first quarter are your low
15 cash points for the year. So this is a depiction of
16 a low point, relatively low point. There is
17 obviously fluctuations day to day. It is not as if
18 we have presented cash in the middle of the summer
19 when it is high.

20 Q So with that let's turn over to Tab 21 or
21 slide 21 just to close out the picture?

22 A 21 is the same data. It is just on the

1666

1 left shows you the liquidity concern of repaying the
2 ATSB loan on the left and the hypothetical solution
3 of extending those amortization payments and making
4 interest payments on the right.

5 Q Now, I said when you began that I had two
6 subjects that I wanted to ask you about, you have
7 testified those two subjects, but of course I forgot
8 that there was a third subject that I wanted to ask
9 you about.

10 In the course of the America West pilot, I
Page 66

11 am sorry in the course of the US Airways pilots'
12 presentation they pointed to a number of documents
13 and a particular prospectus that was submitted in
14 connection with the new stock offering coming out of
15 the bankruptcy that purported to reflect that the
16 transaction was an acquisition by US Airways
17 holdings of America West.

18 Now, they did go on to say that they
19 weren't really trying to make anything out of that,
20 that they were treating this as a merger, but that
21 as a practical matter in fact the transaction was an
22 acquisition by US Airways holdings of America West.

1667

1 Is that your understanding of the transaction?

2 A I am here to testify from an economic
3 perspective and a financial perspective. From a
4 legal or accounting perspective, as far as how you
5 look at and account for the transaction, you know,
6 there are lots of different reasons why you may show
7 that one entity acquired another for tax reasons,
8 for legal reasons, for accounting reasons. I am not
9 an expert on sort of why that is, but what I do
10 understand is --

11 MR. KATZ: Hold on a second. I think
12 since you are not an expert I am going to object to
13 any opinion about it.

14 THE WITNESS: I am going to give my
15 opinion from a financial perspective who acquired
16 who in reality.

17 CHAIRMAN NICOLAU: Go ahead.
18 THE WITNESS: So putting aside sort of the
19 muddy waters and legalities and accounting issues,
20 from a financial perspective you want to look at who
21 controls the company, who is managing the company
22 and, you know, who owns the company, whose

1668

1 shareholders got the company at the end of the day.

2 And irrespective of what tax or accounting
3 rules say, the person that controls the company, the
4 management of the company and the board of the
5 company and the equity interest in the company, that
6 is who bought it irrespective of name. So in this
7 case --

8 BY MR. FREUND:

9 Q Looking at slide 22 at this point?

10 A Looking at 22, America West stockholders
11 received the largest share of the new common stock,
12 America West Holdings had the largest number of
13 designees to the board, and their chairman, CEO
14 prior to the merger is the chairman and CEO of the
15 combined company.

16 So those are the realities of who bought
17 who. And when you think about it, I guess some
18 people can struggle with the fact that a smaller
19 entity can buy a larger entity, but this is a
20 question of value and who has more value. You can
21 be a company with a \$100 million in revenue and be
22 worth a lot more than a company with two billion

1 revenue. A company with 100 million in revenue that
2 has a 10 percent margin of 10 million is worth a lot
3 more than a billion dollars company that is not
4 making any money. So sheer scale of revenue is not
5 important. It is what value is there. 23 --

6 Q Yes, with that in mind let's flip to 23.

7 A 23 is just fact, it is just who, where did
8 the executives come from? Parker, who is at the new
9 Airways CEO as chairman came from America West, CFO
10 Derek Kerr came from America West, Chief
11 Administrative Officer Chuck McCollum came from
12 America West and the EVP of Sales and Marketing,
13 Scott Kirby, came from America West.

14 Q And as to the directors?

15 A As to the directors, out of the 13
16 positions America West former or America West
17 designated six of the 13, U.S. Air got four, and the
18 equity investors have three positions on the board.
19 So that America West has more than both U.S. Air and
20 the equity investors.

21 Q Now, you told us or you were telling us a
22 little bit, and in general terms about the

1 valuation. Let's look to slide 24 and tell us how
2 the ownership of the new entity squares up with what

3 you were telling us about valuation?

4 A Well, in slide 24, and this was sort of
5 the model for the merger, the actual numbers ended
6 up slightly different than this, but because of
7 rights offerings and, you know, there are some
8 decimal issues and things like that. But this is an
9 accurate depiction of the ownership.

10 And effectively the new equity investors
11 who put in their \$565 million were to get 49 percent
12 of the entity, which gives you a valuation north of
13 a billion dollars in total. US Airways creditors,
14 who are really the only stakeholders at this point
15 to receive any value for the U.S. Air entity, were
16 to receive 12 percent and the America West
17 stockholders would receive 39 percent in the new
18 entity.

19 So, when you think about what does that
20 mean, it means that America West stockholders
21 received more than three times the value of the
22 combined entity that went to the U.S. Air

1671

1 stockholders. New equity, you have 50 percent you
2 would expect because they provided the ability for
3 both of these, for this transaction to occur.

4 So just summarizing, America West has the
5 board, America West has the management, America West
6 stockholders have more than three times what
7 effectively U.S. Air creditors have.

8 There is, in yellow here it says U.S. Air

9 stockholders received nothing. U. S. Air
10 stockholders would have received nothing in any
11 scenario as a result of the bankruptcy. So that is
12 not a product of the merger, it is the product of
13 the function of bankruptcy.

14 MR. FREUND: Thank you, Ed. I have no
15 further questions.

16 CHAIRMAN NICOLAU: Shall we recess, Dan?

17 MR. KATZ: Yes, let's recess according to
18 plan and return for cross-examination. I guess in
19 light of all of what we have got to do over the
20 break, I would suggest 2:30, George. Is that all
21 right, Jeff?

22 MR. FREUND: That is fine. Just for

1672

1 planning purposes, my next witness is actually here.
2 I know you haven't -- you have had our slides for a
3 little while, you haven't heard Ed's testimony until
4 today. I am wondering if you expect to finish Ed
5 today so that we put on another witness or whether I
6 should ask him to come back tomorrow.

7 MR. KATZ: No, I would like to complete
8 Professor Haft's testimony today as well.

9 MR. FREUND: Okay, good.

10 CHAIRMAN NICOLAU: Okay, 2:30.

11 (12:13 p.m. -- recess -- 2:35 p.m.)

12 MR. KATZ: Are we ready to begin?

13 CHAIRMAN NICOLAU: I believe so.

14 CROSS EXAMINATION

15 BY MR. KATZ:
16 Q Good afternoon, Mr. Albert.
17 A Good afternoon, Mr. Katz.
18 Q Let's start by disclosing for the record
19 that we did work closely together in connection with
20 the second US Airways bankruptcy; is that right?
21 A That is right.
22 Q And I was representing the Communications

1673

1 Workers of America, one of the unions serving on the
2 official committee of unsecured creditors?
3 A That is right.
4 Q And you were with Giuliani at the time, is
5 right?
6 A Yes. I am just trying to remember. We
7 had that name change from corporate finance, but of
8 course you were in both cases. One case was Ernst &
9 Young and one case was Giuliani.
10 Q And you worked on both bankruptcy cases?
11 A Yes.
12 Q In the second bankruptcy case I think you
13 mentioned that you were the lead advisor for your
14 firm?
15 A Liz Borow and myself co-lead.
16 Q Do you want to spell her name?
17 A L-i-z B-o-r-o-w.
18 Q There were other people who worked on the
19 project?
20 A Yes.

21 Q Do you want to give them credit now while
22 we are sitting here?

1674

1 A On the second case Liz and I led it. Then
2 there was senior staff, Melissa Carnahan, who is
3 Melissa Ellis now, Andy Simon, Bret Kriehauser,
4 sorry I couldn't spell his name for you over there;
5 I don't recall every team member from the deal.

6 Q There were other people from Giuliani?

7 A Yes, we had a junior staff.

8 Q And was there a senior guy, too, who was
9 the vice president who was there for some of it?

10 A We had Rob Worschauer who was a senior,
11 who was not a day-to-day guy on the deal.

12 Q How would you describe the role of
13 Giuliani in connection with the creditors committee,
14 financial advisor to the creditors committee?

15 A Yes.

16 Q In terms of the expertise that it brought
17 to the committee it was mostly in reorganization and
18 financial matters, rather than airline industry
19 background, would you agree with that?

20 A I would not agree with that.

21 Q Didn't the creditors committee with the
22 courts approval also hire Merge Global to advise in

1675

1 particular on airline industry matters?

2 A They did. Merge Global was hired with
3 respect to things like optimizing routes, and we
4 spent a lot of time with Merge Global, this airline
5 is so unprofitable which unprofitable routes can we
6 cut, and so they have access to and kind of software
7 that manipulates data that we did not have access
8 to. So yes, they had kind of a technical role of
9 helping us understand which routes made sense and
10 which didn't, which we did an economic analysis of.

11 Q They would do analysis of issues like the
12 profitability or unprofitability of certain routes,
13 yield from different city pairs, that kind of thing?

14 A There was overlap between the two on
15 things like profitability of certain routes, but we
16 relied on their software to help us analyze routes.

17 Q And they had a couple of people from Merge
18 Global who had a strong background in airline
19 economic matters, didn't they?

20 A Yes, mostly from a cargo perspective. I
21 guess Bob Gallo was at U.S. Air at one point. The
22 Merge Global is really a firm that does cargo

1676

1 analysis, and for, you know, airlines and shipping
2 companies, so not extensive passenger airline
3 experience.

4 Q But they did analyze some of the passenger
5 routes --

6 A They did.

7 Q -- for the committee, did they not?

8 A They did.

9 Q What was the role of Mark Schulte with
10 regard to the creditors committee?

11 A Mark had a limited role, and you could
12 look in sort of any public document on the kind of
13 billings, I don't think you would see Mark had any
14 significant fees in the case. He was there as, Mark
15 is a long time airline industry banker, Merrill
16 Lynch, I believe, for a long time. And I think he
17 is now with Seabury. So he was brought in as an
18 historical investment banking professional who
19 covered the airline industry.

20 Q He had a background with regard to the
21 airline industry in particular, and with regard to
22 investment banking in particular?

1677

1 A He has a combination, absolutely,
2 combination of airline investment banking.

3 Q And he advised creditors committee on
4 those matters along with the other advisors; right?

5 A In conjunction with Giuliani. I don't
6 know if we can talk about this from the creditors
7 committee meetings. I don't believe there was ever
8 a report or presentation made by Mark Schulte that I
9 can recall of substance in the case. He was really
10 there for and as Giuliani was the lead advisor, it
11 may be Mark, do you concur with this, do you have a
12 different view, do you think this is financeable?
13 He is kind of a gray-haired guy from the industry.

14 Q Without getting into the specific
15 substance of what he said, because I want to avoid
16 that for the same reasons as you, he did discuss
17 with the creditors committee issues relating in
18 particular to the airline industry and to investment
19 banking; is that fair?

20 A Sure.

21 Q And in terms of the raising of capital in
22 both the first and second case, is it fair to say

1678

1 that Seabury was pulling the laboring oar?

2 A They -- that was Seabury's role.

3 Q If you look at the fees it was probably
4 something like 20 million in each case went to
5 Seabury for their activities?

6 A That is right, that was their job.

7 Q Which is a lot of money?

8 A Yes.

9 Q Even by those standards.

10 A Yes.

11 Q Let me just clarify one or two points
12 about your background. Prior to the US Airways
13 bankruptcy project that you worked on which began in
14 2002, I guess?

15 A Right.

16 Q Did you have any particular experience in
17 the airline industry?

18 A No.

19 Q And other than the two US Airways

20 bankruptcy cases you worked on, you testified that
21 you had worked in the Masaba case?

22 A Right.

1679

1 Q Was there other airline projects that you
2 worked on?

3 A Advisor to the Delta pilots.

4 Q Oh, right?

5 A In their negotiations as well as --

6 Q The American pilots?

7 A Well, obviously America West, Masaba,
8 Delta, two U.S. Air cases and Independence Air.

9 Q Did you mention American Airlines?

10 A No, I may have mentioned that our firm did
11 some work for American Airlines, Milestone did, but
12 I did not.

13 Q Hawaiian?

14 A No, Hawaiian is, in fact you asked a
15 question about how much airline experience I think
16 that Giuliani has. Well, professionals as a group
17 Giuliani had worked on that Hawaiian deal and Aloha
18 and other airlines. I am not sure exactly what I
19 said right now, but Giuliani had prior airline
20 experience that I was not involved in, and Milestone
21 had experience I was not involved in.

22 Q But you personally did not work on

1680

1 Hawaiian or anything to do with American?

2 A No, just U.S. Air twice, Independence Air,
3 Masaba, Delta and America West.

4 Q Let me show you in Volume C of our
5 materials, and I will give you a --

6 A I have got one coming.

7 Q We have made one available for you. I
8 think Jeff would like to use his.

9 Let me open it up to the right page.

10 A All right.

11 Q In Tab 1, let's start with, there are
12 different dividers in here, and we are going to go
13 to C-1(k). If you don't mind take a look at this
14 document, and tell me if you remember seeing that?

15 A I haven't reviewed it in recent time but
16 it is the merger document.

17 Q It is a memorandum of understanding
18 related to the merger and it is an agreement dated
19 June 13th, 2005, right?

20 A Yes.

21 Q If you flip through it you see it relates
22 to lease arrangements for various airplanes that

1681

1 General Electric and its various subsidiaries were
2 involved in, does that ring a bell?

3 A Yes.

4 Q And if you turn to the, I don't know how
5 to describe it but the signature pages, where it

6 says, "In witness whereof, this Merger MOU was
7 entered into this day and year first above written,"
8 there are places for signature on behalf of US
9 Airways Group, Inc., US Airways, Inc., and then on
10 the next page America West Holdings Corporation, and
11 America West Airlines, Inc., both signed by Derek
12 Kerr.

13 A I am there.

14 Q Are you there?

15 A I am there.

16 Q Okay. So then there is descriptions, if
17 you look at the end, of various airplanes that are
18 going to be returned to General Electric and its
19 various subsidiaries. Do you remember those
20 transactions?

21 A Vaguely. At one point I knew them inside
22 and out but I haven't reviewed them in the last year

1682

1 and a half.

2 Q Well, I am I am not going to ask you about
3 the details of those transactions, I just want you
4 to confirm, like the agreement appears to say, that
5 these decisions, once the merger was announced on
6 May 19th, were worked out and involved input and
7 approvals from not only General Electric and its
8 subsidiaries, and the representatives of US Airways
9 and the bankruptcy court, but also America West
10 Holdings and America West?

11 A So where is the question?

12 Q The question is, isn't it true that
13 America West had input and approved those decisions
14 once the merger was announced?

15 A I wasn't directly part of the America West
16 side but, you know, it makes sense they would have
17 input and they signed the document, so --

18 Q In case they approved it?

19 A Sure.

20 Q Okay. If you flip past the blue divider
21 page there is an SEC filing dated September 20th,
22 2005, on behalf of US Airways group, Inc., called a

1683

1 form S-1/A, and we have got part here that addresses
2 the merger. This is exhibit C-1(I), and if you, the
3 part we have got includes on the second page the
4 description of the negotiations leading to the final
5 merger agreement.

6 Let me ask you if you were aware as this
7 document filed with the SEC says on page No. 76 that
8 even before the petitions were filed in 2004, that
9 would be the petitions for the filings of US Airways
10 group, Inc., and its related corporations --

11 A Uh-huh.

12 Q -- one of the alternatives US Airways
13 group explored was a possible merger with America
14 West Holdings, are you aware of that?

15 A Well, I am aware, and it only makes sense
16 given there earlier defendant about Seabury and John
17 Luth and his role with U.S. Air and America West,

18 you know, there is always rumors flying around. So
19 it is not a surprising statement. It is hard to
20 recall now when I knew the discussions began.

21 Q Well, it indicates in this paragraph I am
22 referring you to that the parties held preliminary

1684

1 discussions about a possible transaction and
2 conducted due diligence during the period from
3 February through July 2004?

4 A Uh-huh.

5 Q That would be in between the two US
6 Airways bankruptcies, so were you aware of those
7 discussions?

8 A No.

9 Q Down below it indicates that
10 December 2004, do you recall that was the month in
11 which there were hearings on the section 1113
12 motions?

13 A I mean I don't recall it but it says that
14 it is, so -- you know, I don't remember exactly when
15 they were, I assume this is correct.

16 Q That the Seabury group then was exploring
17 potential transactions including having executives
18 of US Airways Group and America West Holdings
19 discussing the possibility of resuming their merger
20 negotiations; is that correct, as far as you know?

21 A That is what it says here, yes.

22 Q And then by January of 2005 all of the

1 labor groups had agreed to their 1113 concessionary
2 packages, that is correct, isn't it?

3 A Sounds right, yes.

4 Q And the GE deal had been finalized in
5 November or December of 2004, as I recall?

6 A Sounds about right.

7 Q And if you turn to the next page it
8 indicates that beginning in January 2005 US Airways
9 Group and America West Holdings resumed discussions,
10 and on January 20th the board of directors of
11 America West Holdings discussed the renewed merger
12 talks with US Airways Group as part of its strategic
13 overview presentation. That is all consistent with
14 your testimony, isn't it?

15 A Well, keep in mind, and now we are getting
16 into how I know what from where, and I wasn't
17 allowed to talk about what I knew from the committee
18 before. This is not consistent with when any of
19 this was -- I am not Seabury. Seabury is the
20 advisor to the companies. So I only -- I can
21 only -- everything is filtered through the company
22 effectively.

1 So I have more information than the public
2 does but I don't know when John Luth and Doug Parker
3 and Dave, was it Dave Segal and Bruce Lakefield was
4 in the room. I don't know when that is happening.

5 Q Segal was gone by January --

6 A I do now, but I didn't know then.

7 Q What you are saying is that there was some
8 aspect of these merger negotiations that was kept
9 very close to the vest by the Seabury firm and the
10 top executives in both of these two companies?

11 A As you know, it was a very well kept
12 secret until we actually, I mean this is outside
13 of -- we actually saw Doug Parker and Bruce
14 Lakefield and John Luth in an elevator together
15 which was how we learned of the discussions.

16 Q Do you remember when that was?

17 A It was not far from when it was announced,
18 I would say it was in March.

19 Q But I thought that you had said this
20 morning as part of your testimony that the merger
21 talks did resume in January 2005, did I mishear you
22 or --

1687

1 A I don't believe I said that. As far as we
2 knew from our role, now it is easy because, you
3 know, looking backwards everything is documented.

4 Q Right.

5 A So apparently they did, but we did not, I
6 was not aware that there were merger discussions
7 until that elevator meeting, February or March
8 of 2005.

9 Q Okay. That is exactly what I wanted to
10 know. So this -- the January date is not something

11 that you knew but --

12 A It makes sense today.

13 Q But you are not saying -- you are not
14 denying that it happened either?

15 A No, not at all.

16 Q Then at the bottom of that page going over
17 to the next one it does talk about further
18 activities in February, continuing on to the next
19 page they describe in this SEC filing what happened
20 in terms of due diligence and further negotiations
21 in March?

22 A Uh-huh.

1688

1 Q And again that was really between Seabury
2 and the top executives of the two airlines rather
3 than with the creditors committee and the
4 representatives of the creditors committee is that
5 true?

6 A That is right, and at some point that was
7 all presented to the classes of financial advisors
8 and shortly thereafter to you and the rest of the
9 committee at some point between March and April, I
10 guess.

11 Q Then at the bottom of the page we are
12 looking at it describes what happened in terms of
13 finalizing the agreement starting with March 4, the
14 governance committee meeting of the America West
15 board of directors, and the full board of directors
16 was updated, and then the corresponding efforts at

17 US Airways?

18 A Uh-huh.

19 Q In March Seabury was meeting with the
20 representatives of various parties to talk about
21 economic terms in the possible transaction.

22 So, having gone through all of this let me

1689

1 just ask one question. While these merger
2 negotiations are going on Seabury was also looking
3 to find investors for a stand alone US Airways, I
4 take it?

5 A That is right.

6 Q And one of the things that you described
7 that they found was the Eastshore-Air Wisconsin
8 \$125 million investment?

9 A That is right.

10 Q And that was not only lined up but it was
11 a proffered by the court and it was implemented in
12 the \$125 million came into the US Airways coffers?

13 A That is right.

14 Q I think that we can nail down the dates on
15 that, but I believe we need to look at another book
16 to do that?

17 A Which is a very unique point for new
18 equity to come into a bankruptcy and be put into the
19 company prior --

20 Q It is not unusual to have DIP financing?

21 A It is not unusual.

22 Q So from the standpoint of this being a DIP

1 loan to the extent you view it as a DIP loan, would
2 not be unusual?

3 A Which would be ultimately be equity.

4 Q And it was convertible into equity, and it
5 was converted into equity in the final transaction?

6 A Okay.

7 Q And it was, I am not a slack for John Luth
8 here, but it was a pretty creative idea to go to the
9 people like Air Wisconsin who had a business
10 relationship with US Airways and might have a
11 strategic reason for seeing it survive and prosper
12 and ask them to make investments?

13 A It is brilliant, because the financial
14 markets, on the financial merits on their own didn't
15 in my opinion support it, so that was a very smart
16 place to go. Who has an interest beyond a financial
17 return?

18 Q But despite from the strategic reasons
19 isn't it true that at the time that Eastshore-Air
20 Wisconsin made the \$125 million investment they had
21 not been eliminated as a jet, under the jet services
22 agreement with United Airlines as a feeder carrier

1 for United Airlines?

2 A Well, that is true, that they hadn't been

3 eliminated, to this whole option was a put, but by
4 making the \$125 million investment you have the
5 option to put 70 planes to U.S. Air. The reason is
6 Air Wisconsin had generally a higher cost structure
7 than other carriers. They were the most vulnerable
8 of the entire group. If you look at it, Air
9 Wisconsin has close to the highest level of cost of
10 the carriers, so they were in dire risk of being
11 cut. But it is true that they had the investment --

12 Q What I want the record to be clear and I
13 don't think it is clear just yet, is what United
14 Airlines did as part of its more than three-year
15 long bankruptcy was it said at some point, late
16 2004, that it was going to put its feeder flying out
17 for bid; isn't that right?

18 A That time frame sounds reasonable.

19 Q And in the process of bidding Air
20 Wisconsin is not eliminated as a bidder for the
21 planes?

22 A No.

1692

1 Q But it wasn't clear that it was going to
2 remain the preferred carrier to feed United
3 Airlines?

4 A No, but in my opinion there, they would
5 not have put \$125 million dollars into U.S. Air if
6 they weren't worried about losing their flying.

7 Q Are you aware that the company that owns
8 Air Wisconsin is a closely held corporation run by

9 six or eight individuals?

10 A I don't know the number but I know that it
11 is a closely held private company.

12 Q And they felt that they were going to lose
13 money on this \$125 million investment. They also
14 had the option of simply closing up shop if United
15 Airlines fired Air Wisconsin and letting the
16 corporate shield affect whatever earnings they had,
17 didn't they?

18 A Well, to lose the flying of 70 planes and
19 fold the business is a loss of a lot more value than
20 \$125 million. That \$125 million investment
21 protected, assuming that they thought U.S. Air could
22 survive, and they could keep flying, a value much

1693

1 greater than \$125 million to fly 70 airplanes.

2 Q And they obviously made the call that it
3 was a good bet because they put down the \$125
4 million?

5 A I think as they looked around as having
6 the higher costs, U.S. Air had a lot of different
7 options, because they were in bankruptcy U.S. Air
8 had the ability to reject other flying. If you are
9 flying regional planes and you are about to be
10 rejected and those planes might be rejected in a
11 bankruptcy case, you can't go to a carrier not in
12 bankruptcy that doesn't need any regional flying,
13 they can't boot their existing carrier.

14 You have to find one that has flexibility

15 to take on 70 new planes. At that point in time
16 United is in bankruptcy; who else can take 70
17 planes?

18 Q Don't you know that Air Wisconsin was
19 talking to Delta about it?

20 A I am sure they were, but who else could
21 realistically take 70 planes within a given day, if
22 United says you are done, 60 days? Did Delta have

1694

1 the capacity to absorb those planes in that time
2 frame? I don't think so.

3 Q They weren't in bankruptcy at that time?

4 A They were not.

5 Q I was going to show you the Volume A, if I
6 could. Just to pin down for the record the date of
7 this Eastshore transaction we put in an exhibit that
8 has the debtor's assertions about this.

9 That is tab 14 in Volume A, this is the
10 debtor's Motion To Extend the Exclusivity Period?

11 A Uh-huh.

12 Q And if you look at this last page at
13 Tab 14 it was filed on March 21, 2005 in the
14 bankruptcy court. Do you remember seeing this when
15 it was filed?

16 A I am sure I reviewed this when it was
17 filed.

18 Q All right. And it does go through the
19 normal description of what was happening at US
20 Airways but the first reorganization plan didn't

21 succeed and another bankruptcy filing was necessary.
22 But let me ask you to skip over past that

1695

1 to page 16, paragraph 34, and it talks about the
2 Eastshore-Air Wisconsin \$125 million junior secured
3 debtor in possession credit facility?

4 A Uh-huh.

5 Q And it indicates in paragraph 35 that the
6 court granted an interim approval for that on
7 February 28 and final approval on March 7th, 2005,
8 does that sound about right to you?

9 A Sure.

10 Q And then would that be when the \$125
11 million was paid in?

12 A I think I said in my testimony, I believe
13 it came in somewhere between kind of, you know,
14 April and July, as I recall. I don't believe the
15 125 came in all at once, and I could be wrong, but I
16 think it was phased in. It might have been 75 and
17 50, you know. That 125 came in, of course, but I
18 don't remember exactly how it was trenched in.

19 Q At some point shortly after the approval
20 by the court --

21 A The dollars came in.

22 Q -- the dollars came in, and also the next

1696

1 paragraphs, 36 in particular, talks about the other
Page 90

2 \$125 million coming in from Wexford and Republic?

3 A That is right.

4 Q Or at least proposed investment?

5 A The potential.

6 Q The proposed investment was filed with the
7 court, right?

8 A The potential conditional investment, yes.

9 Q And ultimately, while there were
10 conditions attached to it, ultimately it was US
11 Airways that rejected this \$125 million?

12 A Well, US Airways rejected it because they
13 had their full boat of the 565 plus the concessions
14 from their vendor, and may have decided for
15 strategic reasons that this might not be the ideal
16 investment. So, yes, U.S. Air turned it down after
17 the merger was announced and there was \$565 million
18 of other money, yes.

19 Q Okay. And that time frame was March that
20 was going on; is that right?

21 A It was being heard in March. I thought I
22 heard that it was being discussed in February, but

1697

1 within that time frame. I think it was announced
2 well before this quarter in March 31st. I believe
3 February was the date, from my testimony.

4 Is it that important?

5 Q I don't think so --

6 A Well, yes, March.

7 Q While we are in this why don't you flip to

8 the next exhibit. This is a US Airways publication
9 dated April 15th, 2005?

10 A This is Exhibit 15?

11 Q Yes. And it talks about the 125 million
12 from Eastshore in February, the 125 million from
13 Republic in March, contingent upon US Airways
14 securing an additional 100 million in exit
15 financing?

16 A As well as contingent on other things that
17 they don't write here, such as approval of a
18 successful business plan. But I see what you are
19 pointing to.

20 Q Okay, and then Exhibit 16 is an
21 April 20th, 2005 newspaper article from the Arizona
22 Republic, if you look down to the bottom of the page

1698

1 it says US Airways chairman David Bronner told the
2 associated press late Tuesday, that would be the
3 Tuesday before April 20th, that talks with several
4 carriers started several months ago, but had
5 progressed the furthest with America West. Do you
6 recall that happening, David Bronner's comments to
7 the AP being released?

8 A I don't, but here they are.

9 Q And tab 17 there was a public announcement
10 by the company that they were in discussions with
11 America West?

12 A On April 22nd.

13 Q On April 22nd right, just after Dr.

14 Bronner spilled the beans to the AP?

15 A God bless him.

16 Q Tab 18 is an article, dated May 22, 2005
17 from Dan Fitzpatrick of the Pittsburgh Post Gazette,
18 and it does describe the history of the
19 negotiations, and says that they concluded when John
20 Luth got an e-mail from the CEO of Air Canada,
21 Robert Milton, on May 12th, in which Air Canada's
22 board approved the final piece of the \$1.5 billion

1699

1 in financing. Is that accurate to the best of your
2 knowledge?

3 A I wasn't there for the din of exploding
4 fireworks and the wave of Luth's Blackberry but --

5 Q I am sorry you missed that it. Must have
6 been very exciting, consistent with what you know
7 about it.

8 So if there is talks about the merger that
9 begin in January and February 2005, and they are
10 talking about the merger and they are getting 125
11 million from a deal with Eastshore in February and
12 the possibility of another 125 million from
13 Wexford/Republic in March, and the boards are
14 meeting in March and April and the call comes in on
15 May 12th that the 465 million, 1.5 billion financing
16 package, however you want to put it, the financing
17 is all arranged. When is the period of time that
18 you would expect US Airways to be out looking to
19 line up a different plan for emerging from

20 bankruptcy?

21 A That is a great question, because as any
22 good investment banker would know, you have to do

1700

1 everything on parallel paths. They are burning
2 \$600 million in cash while they are in bankruptcy.
3 You have to get a transaction done of some sort.
4 You can't hang, you can't put all your eggs in one
5 basket, so to speak and pursue this merger.

6 There are so many things out of their
7 control. A shareholder of a public company to merge
8 with a bankrupt company, that is huge. You can't
9 hang everything on that. You have to look at what
10 your other alternatives would be and I wouldn't be
11 surprised, and this is pure conjecture, but that
12 Republic and Eastshore may have been aware of this
13 deal. As you said, it had been talked about since
14 January. I am not convinced that their money came
15 in as a result of a stand alone plan.

16 I am sure that John Luth, when he had
17 discussions with them didn't say we are looking at a
18 stand alone plan, when they have been talking about
19 a merger for, you know, 10 months, but --

20 Q Is it fair to say that John Luth was out
21 talking to people to find the other \$100 million to
22 make the package come together as a parallel track?

1701

1 A I -- if I was John Luth I would have been
2 making damn well sure I had an alternative path, but
3 I can't tell you that for a fact.

4 Q But none of us really know because John
5 Luth hasn't told us; is that fair?

6 A That is fair. And there was no need to
7 even ask him the question at this point.

8 Q Wouldn't you say it is also fair that at
9 some stage in this process the merger investment
10 track became solidified to such an extent that it
11 eclipsed the talks for a separate stand alone
12 emergence from bankruptcy?

13 A I think at some point, and I am not going
14 to pick that point, but, you know, certainly if it
15 closed on, what day did it close, October --

16 Q September 27th.

17 A Certainly on the 26th and 5th and 4th and
18 3rd and 2nd and back, but at some point which would
19 be arbitrary, there was some question whether it
20 would close or not, so there should have been
21 activity --

22 Q Well, there were a number of approvals

1702

1 that were required for the transaction to come
2 together; weren't there?

3 A Yes.

4 Q And it required approval of the ATSB for
5 example, they had loaned money in both companies?

6 A That is right.

7 Q And each of those loans probably had a

8 condition, I think we could say with certainty, that

9 it had a condition that you get ATSB approval or you

10 can't engage in a transaction like this?

11 A That is right.

12 Q And it required the approval of General

13 Electric because they had various agreements that

14 locked up U.S. Air for certain and possibly America

15 West, right?

16 A All correct.

17 Q And it would have required approval of the

18 bankruptcy court?

19 A Yes. And America West shareholders.

20 Q And America West shareholders. And --

21 A That is a lot of people to bank on and not

22 have a parallel path.

1703

1 Q You talked about TPG for a while. Aren't

2 the major investors in TPG David Bonderman and Jim

3 Coulter, they started it didn't they?

4 A Well, they are no longer the major, of the

5 \$30 billion I don't believe they are 16 billions of

6 their money, but they are the major principals in

7 the firm, I think is what you mean to say.

8 Q Right, Bonderman and Coulter?

9 A Yes.

10 Q And they started the operation?

11 A I actually am not, I would take your word

12 for that. I am not that familiar with exactly how
13 it was started originally.

14 Q Did you know that Bonderman was a lawyer
15 for Arnold & Porter who became an investment banker?

16 A I do not know his personal background off
17 the top of my head.

18 Q Are you familiar with the terms on which
19 he invested money in the second Continental
20 bankruptcy and used Air Micronesia as collateral for
21 his investment?

22 A I was not directly involved in that

1704

1 transaction, so no.

2 Q Well, it was back in 1992 or '93,
3 something like that?

4 A And I was, you know, not involved in the
5 restructuring world 14 years ago.

6 Q You did testify that he made out
7 successfully on the Continental investment?

8 A As I have read through history, it is
9 cited in current news articles, it is cited in
10 articles about the airline industry.

11 Q But you are not familiar with the exact
12 details of how that worked out?

13 A I am not.

14 Q Okay. Are you familiar with the voting
15 power that the TPG investors had in terms of
16 swinging America West shareholders vote on the
17 approval of this transaction?

18 A I am, you know, aware that they had a vote
19 and it could be, I guess a lot of people could be
20 viewed as having a swing vote. I am aware they had
21 the vote, so to speak.

22 Q Do you know what percentage of the voting

1705

1 power they controlled?

2 A I do not recall.

3 Q Do you know whether their shares had
4 special voting privileges?

5 A I believe they did.

6 Q And it gave them 10 times the voting power
7 of other shares?

8 A That sounds correct.

9 Q Do you know how many other shareholders
10 needed to be convinced aside from TPG?

11 A I don't recall.

12 Q The ATSB was very happy with this
13 transaction, weren't they?

14 A Well, the ATSB had a vehicle to have
15 effectively both of their loans paid off.

16 Q They had an unsecured loan with America
17 West that they got collateralized as a result of
18 this transaction; is that true?

19 A Again I don't remember the specifics, but
20 that makes sense to me.

21 Q And they ended up shortly after the close
22 of the transaction getting out of the loan

1 al together at a profit?

2 A This was a successful transaction for the
3 ATSB, yes.

4 Q And GE had some good reasons to favor the
5 merger too, didn't they?

6 A GE had good reason to make sure its planes
7 stayed in the sky, yes.

8 Q And the shareholders, as it turns out,
9 shareholders of America West, did pretty well, I
10 think one of these books we have got in front of you
11 shows, do you have A there, Volume A of our
12 exhibits?

13 A What tab?

14 Q I am looking for it. Kevin, do you
15 remember what tab that was?

16 A It is going to be a big stack --

17 Q 28, look at 28. No, that is not the right
18 one. That is for a different purpose. But you are
19 familiar with what happened with the price of the
20 stock right?

21 A I am.

22 Q And if you had it charted it would go up

1 and to the right starting from the day the
2 transaction closed and continuing right on?

3 A With some fluctuations in between
4 generally, yes.

5 Q Okay, that is good enough. So that they
6 voted, when they voted they voted overwhelmingly for
7 the deal, didn't they?

8 A I believe they voted, it got done, so --

9 Q It was 90 something percent that voted for
10 it?

11 A Including the super voting shares, right.

12 Q Let's go back to tab 26, please. If you
13 look at the bottom in the left-hand column at the
14 top to the right it shows a 96 percent approval of
15 the total votes cast in favor of the merger by the
16 America West shareholders?

17 A Yes.

18 Q And the bankruptcy court was happy to get
19 rid of the case, right?

20 A I don't -- I don't know, I don't know if
21 the court is happy to get rid of the case. I guess
22 they could be out of a job if they get rid of too

1708

1 many cases.

2 CHAIRMAN NICOLAU: Not to worry.

3 THE WITNESS: There is sufficient bad
4 management to keep you employed?

5 MR. KATZ: This court covers northern
6 Virginia. They have got all those technology
7 companies in northern Virginia that are lined up to
8 file for Chapter 11.

9 MR. FREUND: The bankruptcy lawyers are
10 probably not happy to see the end of the case.

11 BY MR. KATZ:

12 Q Right. So that they got all those
13 approvals. And then would you turn to Tab 28, on
14 the second page of this publication, US Airways
15 dated October 21, 2005, on page 1 they talk about
16 the ATSB selling their government backed loan and
17 then on page 2 they have the breakdown of ownership,
18 which is slightly different from what you have, this
19 is after the transaction closed and the post merger
20 public offering took place.

21 A Exactly, because this actually, as I had
22 mentioned in my testimony, there was the rights

1709

1 offering, so the total cash raised which they cite
2 in here was 867, so you know it is actually
3 interesting, you know, in this case, so that the US
4 Airways creditors have less than 12, they have
5 11 percent of the company.

6 Q And the America West shareholders ended up
7 with 20 percent of the company, right?

8 A That is right, because of the dilution
9 from the rights offering and the post merger public
10 offering, so the America West shareholders only
11 ended up with twice the value of the US Airways
12 creditors.

13 Q And the new investors, if you add up the
14 ones under other public equity, you have got
15 44 percent. Is it fair to say that leads to
16 56 percent from the new equity investors including

17 those six firms that are listed there?

18 A Yes, that adds up to 56 percent.

19 Q Great, I am glad the arithmetic works out.

20 That is correct as far as you know, isn't it?

21 A Yes, and it is not in contrast to my

22 testimony. This just happened to be after the

1710

1 rights offering. So the difference being that those
2 equity investors went from 49 to 56 percent and the
3 public post merger offering got 13 percent put that
4 all into U.S. Air and America West, but America West
5 is still by far the larger holder of value versus US
6 Airways.

7 Q Versus the U.S. Airway creditors?

8 A Which are effectively their stockholders
9 at this point.

10 Q And 56 percent, the majority of the equity
11 is owned by the new investors, that is correct isn't
12 it?

13 A Yes, yes.

14 Q Don't get rid of either Volume A or Volume
15 C just yet, but let's turn back to your exhibits,
16 Mr. Albert's, and in particular let's start with
17 Exhibit 3?

18 MR. FREUND: Exhibit 3 or page 3 of
19 Exhibit 1?

20 MR. KATZ: I mean page 3 of the main set
21 of slides.

22 MR. GILLEN: Exhibit 4, page 3.

1 BY MR. KATZ:

2 Q Thank you. Now, this is as I understand
3 your testimony a quote from Steven Wolf's testimony
4 in front of a House or Senate committee.

5 A Uh-huh, yes.

6 Q And do you know what the subject of the
7 hearing was that the congressional committee was
8 running?

9 A The subject was the airline mergers and
10 their effect on American consumers.

11 Q Okay. You know the merger was announced
12 in May 2000, right?

13 A Sounds right. I don't recall the exact
14 month.

15 Q And so it had been pending for quite some
16 time when this hearing occurred, that is true?

17 A Yes.

18 Q It is a fact, isn't it, Mr. Albert, that
19 the merging parties, U.S. Air and United, did not
20 ask Justice Department to involve the failing
21 carrier doctrine in order to approve this
22 transaction?

1 A The -- I am far from an expert on the
2 failed U.S. Air-United merger, you know. I didn't

3 work on it for either side on that case.

4 Q You are familiar with the Failing Company
5 Doctrine?

6 A I don't have direct experience with that,
7 no.

8 Q So you don't know one way or the other
9 whether the parties invoked that in seeking approval
10 from the Department of Justice?

11 A I do not know.

12 Q Do you know whether the merging parties,
13 America West and U.S. Air, invoked the Failing
14 Company Doctrine in seeking Justice Department
15 approval for the merger, that did occur?

16 A You know, again my role as a financial
17 advisor, the legal matters are left to the
18 attorneys. So I am not aware of the tactic that was
19 used to convince the Justice Department for
20 approval.

21 Q We didn't mention among the many approvals
22 that was necessary, we didn't mention the anti trust

1713

1 Department of Justice, but they approved the
2 transaction too, didn't they?

3 A They did.

4 Q And they did so rather quickly because
5 there is not really, has never been much competitive
6 overlap between America West and U.S. Air?

7 A That is true.

8 Q Exhibit -- your exhibit, the same

9 exhibit, page 6, you are talking about the first
10 bankruptcy here, and the filing was in August
11 of 2002, as I recall, and I don't know whether it is
12 in your chronology or not, but it was the next month
13 that the Retirement Systems of Alabama and TPG made
14 their competing offers?

15 A That is right, TPG same month. TPG came
16 first of course, actually I think, and I have in my
17 chronology which I believe to be correct, so TPG is
18 in August, they file in August, TPG makes the offer
19 of concurrent effectively with the filing and then
20 RSA comes in a month later, really as it became
21 clear that TPG wasn't going to be there at the end
22 of the day.

1714

1 Q But TPG never announced that it was
2 pulling out of this transaction, did it?

3 A No, it just decided not to bid again.

4 Q It never withdrew its \$200 million offer,
5 did it?

6 A You know, I don't know technically whether
7 they withdrew it or not, but once RSA outbid them
8 they were no longer involved in the process, so they
9 effectively withdrew. Maybe they didn't technically
10 withdraw.

11 Q Are you saying they withdrew by not
12 topping the RSA offer?

13 A Or continuing to do any further diligence
14 or investigations of the transactions.

15 Q They didn't make a further bid?

16 A No, they did not.

17 Q But there were two bids within a month for
18 the company. Doesn't that indicate recognition by
19 the investors of the potential value of the company?

20 A Well, this is in the first bankruptcy, and
21 those investors both have conditions of doing full
22 diligence, understanding the plan. There is no real

1715

1 risk to an investor, and I represent buyers all the
2 time and put term sheets into the company. That
3 doesn't mean anything. Diligence is an out. If
4 we don't like what we see you have an out and there
5 is not much of a risk in doing that.

6 Q They put down a substantial deposit?

7 A They may have, depending on what you
8 consider substantial out of an entity that say has
9 \$30 billion in funds, there was some deposit.

10 Q Would you flip over to page 8, please.

11 A I am there.

12 Q This shows the cash from operations and
13 operating profit for 13 months, I guess 13 months,
14 starting from September-October --

15 A Yes, that is right. You have that sort of
16 subproblem in October because it is not a full
17 month. Yes 13 months, and it is cumulative just to
18 make, these are not the monthly losses, it is
19 cumulative. They are both cumulative lines.

20 Q Oh, I see, it is not the monthly

21 performance?

22 A Well, it is the cumulative monthly

1716

1 performance. So as you lose money over time you are
2 falling down and to the right, just the opposite of
3 the stock chart we discussed earlier, as those
4 losses increased over time. And then conversely
5 where that line, you know, is rising from one period
6 to another, there would have been a small profit.

7 Q So, look at February '05, for example?

8 A Right.

9 Q To March '05, there is an increase in cash
10 from operations and there is also an operating
11 profit?

12 A Yes.

13 Q And the same, in terms of the red line,
14 the operating profit goes up from March to April, so
15 that is a positive number as well?

16 A Yes.

17 Q And then from May to June, June to July
18 and July to August there are slight operating
19 profits in each of those months?

20 A Right, as you would expect during the
21 strong summer months of airline, the strong part of
22 the cycle.

1717

1 Q In terms of the cash from operations would
Page 107

2 this include the \$125 million investment --

3 A No.

4 Q -- it would not?

5 A No, it would not. It doesn't fall under
6 cash from operations.

7 Q Because I am looking at the big increase
8 in the blue line from February to March, that goes
9 up, I can't tell from the scale, what would you say,
10 about \$100,000?

11 A Well, these are in millions and my guess
12 it is maybe \$75 million. They are in 10 thousands
13 but 200 thousands is 20 million, so when you look at
14 that scale on the left, 100 -- I would say is about
15 75 million, just kind of eyeballing it from February
16 to March.

17 Q And this is designed to show the
18 operations during the period of bankruptcy?

19 A That is right.

20 Q And that is why you have the stub month in
21 September, because they filed in the middle of the
22 month in September of 2004?

1718

1 A That is right.

2 Q So the first month, I don't know what you
3 are starting point would be, would that be a month
4 and a half?

5 A I would have to double check. I believe
6 it is September, you know, roughly the middle, it is
7 the date of the filing through October 31st.

8 Q September 12th I think it was to October
9 31st?

10 A Okay, a month and a half.

11 Q Maybe it is easier to see on page nine
12 although there is different things measured here.
13 For instance if we look at the bar chart on the left
14 from February to March, the company goes from \$406
15 million in cash to \$513 million in cash?

16 A That is right.

17 Q So that is an increase of more than
18 \$100 million?

19 A Yes and that, this number the cash
20 balance, it is cash. Cash is cash. It does include
21 the money that came in and whatever month it came
22 in.

1719

1 Q So Eastshore would seem like it came in in
2 March?

3 A Yes, and I believe that it did, as
4 testified. It is just I haven't gone back to see
5 whether it came in March or April, but certainly it
6 appears that it came in in March.

7 Q Then looking at these numbers though,
8 there is another increase from March to April, even
9 though it is a slight one?

10 A There is.

11 Q \$23 million, right?

12 A Uh-huh, yes.

13 Q And then another increase of another

14 \$23 million from April to May?

15 A Yes.

16 Q And then --

17 A Decreases thereafter.

18 Q -- decreases by 2 million from May to
19 June, but --

20 A I believe there is also asset sale
21 proceeds coming in here as well, from the \$110
22 million sale to Republic.

1720

1 Q But the company is building cash one way
2 or another during that period of time?

3 A It is during the strong cycle for the year
4 they are building a minimal -- you know, it is hard
5 to say that, really. Because if you look at March
6 it is 513, but July they are at 490. So over the
7 strongest period of the year they are burning
8 \$23 million.

9 Q There are a lot of things that affect,
10 that go into what these numbers are?

11 A Well, cash is cash. That is why it is
12 here, because it is not manipulable, it is after
13 everything.

14 Q You track the cash coming in the door and
15 then you mark it down, is basically --

16 A This is not even that complicated. This
17 is just a company reports its cash balance at the
18 end of each month. There is no analysis done here.
19 So between March and July, the best months of the

20 year, they burned 13 -- \$23 million.

21 Q And are you saying if there is an aircraft
22 that they do a sale/lease back on and cash comes out

1721

1 of that, that cash would go into these numbers as
2 well?

3 A Yes, everything. Any fund raising, this
4 is -- it is everything, it is their cash at the end
5 of the month. It would be change in cash from
6 operations less any capital expenditures they made
7 plus any asset sale proceeds plus any investment
8 proceeds less any payments of debt.

9 Q Isn't it true that at some point when it
10 becomes clear that only approvals, all the approvals
11 are going to be made for the merger transaction to
12 go forward that the people like the ATSB, General
13 Electric, and the other parties who had to approve
14 it are going to see that the transaction is
15 consummated, since they feel they have something to
16 gain from it?

17 A They are going to hope that it gets
18 consummated. I think we all know in the deal world
19 that the deal is not done until the deal is done,
20 but yes, at some point there is an expectation that
21 yes, this thing is going to really get done.

22 Q I am not asking to you say that the day

1722

1 before it actually closed or a month before or when?

2 A Right.

3 Q But there is a moment in time when the
4 cash becomes largely irrelevant because parties to
5 the new transaction expect and want it to go
6 through; is that fair?

7 A Well, no, because again if it doesn't go
8 through or if it just gets delayed you need to have
9 enough cash to survive through the deal closing.

10 Q Through the September 27th day?

11 A Day number one or if that gets deferred
12 because some approval doesn't go through or from all
13 parties that we talked about, you would want to make
14 sure you had some way to kind of run your business.

15 And in some cases you would go get a
16 bridge loan and say look we are out of money, we are
17 losing money, but the deal is going to close, can we
18 do a bridge loan, and someone may step in and do
19 that.

20 Q Even looking at these numbers on page 9,
21 however, US Airways one way or the other managed to
22 have enough cash to carry it through the 27th of

1723

1 September when the transaction occurred, that is
2 fair, isn't it?

3 A Yes.

4 Q So all these people on page 10 who said
5 that it was going to liquidate, they were all wrong,

6 right?

7 A Do I have to answer that?

8 CHAIRMAN NICOLAU: Next question,

9 Mr. Katz.

10 BY MR. KATZ:

11 Q Turn to page --

12 A Although Bruce Lakefield agreed with them
13 even after the fact.

14 Q Let's turn to page 14, please. We talked
15 about this; let me just ask you, you don't know the
16 reasons why Eastshore and Republic made their
17 investments, do you? You didn't talk to the
18 representatives of Eastshore and Republic about
19 making their investments, did you?

20 A I did not, but based on my experience they
21 clearly had a strategic motive as well as financial.

22 Q Financial. Exhibit 15, you talked about

1724

1 how important cash was, I believe, now we are
2 talking about America West?

3 A That is right.

4 Q We have shifted subjects. Let me just
5 make sure my notes don't -- okay, let's talk about
6 America West and its liquidity issues. And I think
7 you said on the right-hand side of the page that the
8 234 million for the first quarter is the important
9 number as far as you are concerned?

10 A That is right.

11 Q And that is because even if the restricted

12 cash is restricted because of a credit card
13 processors rules, what is important is the
14 unrestricted cash?

15 A That is right. And also to be fair, this
16 is apples to apples. So all the U.S. Air cash
17 numbers, everything we have presented is available
18 cash, we are not playing around with --

19 Q There may have been restricted cash but
20 that didn't figure into the charts we were just
21 looking at?

22 A That is right.

1725

1 Q Okay. So 234 million, did you calculate
2 the number of days of operations that would work for
3 America West?

4 A Well, just, you know, ballparking that,
5 the first quarter of 2005 there was about 723
6 million revenue, and your costs are almost
7 equivalent to your revenue at this point, so it
8 works out to about --

9 Q Divide 90 into 70, 723 and come up with
10 80?

11 A What is that?

12 Q Divide 90 into 723 and get 80?

13 A No, no, no, 723 million for 90 days is
14 roughly \$8 million a day.

15 Q 8 million --

16 A 8 times 9 is 720, you agree with that,
17 right?

18 Q Yes, so you divide 8 into 24 --

19 A Right, which would be roughly 29, at that
20 exact point in time. The convention is probably to
21 look over four quarters, but this is as good a
22 measure as any.

1726

1 Q Do you know how that compares to Northwest
2 and Delta shortly before they filed for bankruptcy
3 in September 2005?

4 A I know that it is not a relative --
5 relative to other airlines, it is not an
6 exceptionally strong liquidity position. I think
7 the huge point here is that there is a very big
8 difference of having 24 days of operating expenses
9 when your cash is stable, than it is when you have
10 24 days of operating expenses when your cash is
11 declining, it is a huge difference.

12 Q And you said that you thought that America
13 West continued to do well from a cash standpoint and
14 operating performance standpoint throughout 2005?

15 A If you look, I don't have it here as
16 evidence, but if you look at the publicly filed 2005
17 10K that separates the two airlines, and you can net
18 out payment due from affiliates, which would reflect
19 some of the new money that came in. If you net that
20 all out they ended the year with \$500 million in
21 cash. So they did much better than the projections
22 that are here.

1 Q That is what you testified about this
2 morning?

3 A Yes.

4 Q I think you said something to the same
5 effect?

6 A I did.

7 Q All right. Over the break we pulled out
8 the 2005 10K. I would like to mark this as exhibit
9 G-5 I think we are up to.

10 It is an excerpt, it is not the full
11 document. But, three copies for the panel, would
12 you pass these to the representatives for the
13 America West pilots on the other side there.

14 MR. FREUND: Maybe you want to ask him the
15 question and he can take a look at the document
16 while we take a short break?

17 MR. KATZ: If you would like a break,
18 Jeff, that is just fine.

19 MR. FREUND: That is exactly what I would
20 like.

21 MR. KATZ: Well, I am not going to ask him
22 a question about it just yet, but let's take a

1 break. Jeff wants a break.

2 CHAIRMAN NICOLAU: Okay.

3 (3:43 p.m. -- recess -- 3:54 p.m.)

4 CHAIRMAN NICOLAU: Congratulations, that
Page 116

5 five minutes was almost, it was less than 10.

6 MR. KATZ: Miracle.

7 Let's resume.

8 CHAIRMAN NICOLAU: Okay.

9 BY MR. KATZ:

10 Q Exhibit G-5, Mr. Albert?

11 A Is that this?

12 Q That is this, yes.

13 A Okay.

14 Q And we have just taken out the parts
15 beginning at page 162 after the cover?

16 A Yes.

17 Q Where they have the America West airlines
18 separate numbers?

19 A Yes.

20 Q Which is what you referred to?

21 A It is.

22 Q Let me show you page 163.

1729

1 A Right.

2 Q And if you look down the 2005 column on
3 the statement of operations it appears there was an
4 operating loss for the year of \$120 million; is that
5 correct?

6 A That is correct.

7 Q And then there was a -- when you get to
8 the so-called bottom line, the net loss was \$397
9 million; is that correct?

10 A Yes.

11 Q And you were referring before we took the
12 break to -- well, let's --

13 A 200 million of which is a change in the
14 accounting principles.

15 Q The 195 million is the loss before
16 cumulative effect of change in accounting principle,
17 and then they footnote three, change in accounting
18 principle was 202 million, right, so that is not a
19 cash loss, the 202 million?

20 A No, it is not.

21 Q We may as well go to note 3. I included
22 that in these materials since it jumps out at you

1730

1 because it is such a big number, and it appears on
2 page 176, change in accounting policy for
3 maintenance costs. Is that the source of the
4 \$202 million item?

5 A Yes.

6 Q Since you are the financial whiz would you
7 like to explain to us what that is about?

8 A But I need to a minute to read it and
9 digest it.

10 Q Okay.

11 A You know, without -- I need a little bit
12 of time to fully understand it, but effectively they
13 are changing the way that they record the cost of
14 their maintenance, which results in an accounting
15 charge of \$202 million. It is the difference
16 between how their accounting worked and how US

17 Airways accounting worked.

18 My role, I focus on cash as opposed to
19 accounting, so I would be much more focused on the
20 net cash provided by operating activities as opposed
21 to net income, but that appears to be what it is.
22 It is a change from their principle to U.S. Air's

1731

1 principle.

2 Q We will get to the cash page in one
3 second. Let's flip to page 164, the balance sheet,
4 please.

5 A Yes.

6 Q And there it does show that the current
7 assets at the end of the year 2005 included cash and
8 cash equivalents of \$632 million?

9 A It does say that.

10 Q And is some portion of that restricted
11 cash?

12 A It is not. It is not. Restricted cash is
13 shown separately, \$229,000. It is not under current
14 assets because it is not a current asset.

15 Q \$229 million?

16 A That is right.

17 Q And at the bottom of the page where they
18 show the stockholders equity --

19 A Yes.

20 Q -- it is a minus \$110 million?

21 A It is.

22 Q And then your, the page you are most

1 interested in is page 165, statement of cash flows?

2 A Yes.

3 Q And there they go through these various
4 adjustments to the negative 397 million to come up
5 with --

6 A That is right, including adding back that
7 202 million that we discussed earlier.

8 Q Right, and they also add in something
9 called 900 -- I am sorry, add in a figure of 998
10 million halfway down the page?

11 A That is right.

12 Q Called increase in payable to affiliate?

13 A That is right.

14 Q Do you know what that is?

15 A I do. That is related to the -- the
16 challenge of presenting these two businesses
17 separately at the year end 2005 is that from a
18 financial perspective they are not separate anymore.
19 So when the new monies came into the business on
20 emergence, some of it is reflected on America West
21 balance sheets, some of it on U.S. Air's.

22 So what this effectively says is that 998

1 is cash that came in, but it is from an accounting
2 standpoint it is due back to the affiliate so, it is

3 sort of fair to say that that 998 would not exist
4 without the merger.

5 That 998 wouldn't come in, remember,
6 because it is reflective in large part due to
7 financing and the result of the merger. So instead
8 of saying cash from operating activities was 974
9 million, it is really more like neutral, \$20 million
10 loss for the year from operating activities, it is
11 sort of the correct way to look at this. But it is
12 a pure accounting convention.

13 Q Do we know what affiliate this money is
14 due to?

15 A It is some U.S. Air entity.

16 Q Some subsidiary of US Airways Group Inc.?

17 A Yes.

18 Q In the maze of lines?

19 A Yes.

20 Q Okay.

21 A And actually I would like to point out
22 something, I think would be helpful for everyone,

1734

1 including you, which is --

2 Q Go ahead?

3 A When I talk about that, I gave the
4 presentation for the projection of America West cash
5 to be 178. I said if you look at the 10K it
6 actually ends at 500, and you have pointed out that
7 correctly that 632 at year end 2000, and I just, so
8 everyone has the same perspective, short term

9 investments are pretty close to cash. They are
10 investments that can be readily turned into cash.

11 Q Uh-huh.

12 A And so you know, when I think about cash
13 it is actually 632 plus the 319 which is 951, but
14 less the payable to affiliate, which you see below,
15 and is related to the number that you are discussing
16 in the cash flow statement, because that 443, you
17 know, if that had to go away, if you had to make
18 that payment that would reduce your cash. So, that
19 is how I get to 500 --

20 Q Just for everyone's benefit I see what you
21 are talking about, but let's point out those numbers
22 so that it is clear on the record.

1735

1 Going back to page 164?

2 A Right.

3 Q Why don't you just identify each of the
4 numbers you just mentioned?

5 A Sure. The 2005 America West year end
6 cash, 632 million, short term investments of 319
7 million. So those two sort of sources of liquidity
8 total \$951 million they have access to.

9 It might also be worth noting that
10 restricted cash is 229 million, which would be in
11 addition to that, although not readily available as
12 I said earlier.

13 And under the liability section there is a
14 payable to affiliate due of 443 million, so if you

15 had to settle everything out one could look at that
16 as offsetting the short term investment as some
17 components of cash.

18 Q When you are saying in your testimony a
19 minute ago that the 443 million is part of the
20 figure on page 165, of 998 million?

21 A Yes, and, it is related to the figure on
22 the cash flow statement of 998 million.

1736

1 Q Is it fair to say that when you are
2 looking at numbers like these for the end of the
3 year 2005 and you have a major transaction like
4 merger transaction, on September 27th, that all of
5 these numbers have been affected in one way or
6 another by that major merger transaction?

7 A I have a rather long answer to that
8 question; a minute if you will allow me to indulge.

9 Q Go ahead.

10 A The biggest, as I said it is difficult to
11 present these two airlines stand alone after they
12 have been merged. That being said, they have only
13 been merged for three months and 18 days at this
14 point. So there is not a huge impact on the income
15 statement.

16 Certainly I don't think anyone would argue
17 that you realized a bunch of synergies and got a
18 bunch of benefits in three months. There is
19 probably something, there may actually be more costs
20 in the first three months that they are together. I

21 don't know what it is, but whether the costs and any
22 potential synergies would offset, but it is not a

1737

1 meaningful impact to the P & L from the merger over
2 that three-month period. The balance sheet they
3 largely reflect the result of the merger in this
4 payable to affiliate line.

5 So you know, when you say everything is
6 affected, I don't know that accounts payable or
7 accounts receivable, a lot of those line items, I
8 think they are negligibly affected. I think a lot
9 of the P & L doesn't have any material effect, and
10 the majority of it, in my opinion there is no way to
11 prove this right or wrong, but it is reflected in
12 that payable to affiliate concept where money has
13 come into the estate as a result of the transaction.

14 And the kind of legalities of that, legal
15 entities, that and the accounting convention cause
16 that to be shown as payable to affiliate, but that
17 is where the majority of the impact is reflected in
18 2005. If you fast forward to 2006, then every
19 single number on everybody's statements are affected
20 by the merger.

21 Q You did testify that the ATSB loan was
22 paid off and the ATSB was removed from the

1738

1 transaction at some point after the closing of the
Page 124

2 merger, right?

3 A I don't remember the exact time, but yes.

4 Q Do you know whether the \$43 million or
5 whatever the exact number was that was due in the
6 second half of the year was paid by America West?

7 A It was due in September, so this is all
8 right at the time of the March and September. I
9 don't know, it all ends up buried in the
10 combinations, and it may even in fact tell us
11 somewhere in here. My guess is that it was paid in
12 September, because the loan wasn't yet repaid in
13 full, even at the end of the year.

14 Q In this same exhibit would you flip to the
15 back, it is page 200. This is a quarterly financial
16 analysis for America West airlines, including at the
17 top of the page 2005; is that right?

18 A That is right.

19 Q And it shows as adjusted for the first
20 quarter an income of \$29 million?

21 A Uh-huh, yes.

22 Q And a \$2 million loss in the second

1739

1 quarter?

2 A Yes.

3 Q And \$83 million loss in the third quarter
4 and a \$139 million loss in the fourth quarter?

5 A Yes. There is a footnote I would like to
6 read and then also note that, you know, 13 million
7 of that is nonoperating income and expenses, which I

8 am guessing now are related to the merger
9 transaction, the professional fees.

10 Footnote 3, so out of that \$83 million
11 there is 13 that is not operating, there is another
12 12 I guess it says under footnote 3 that is related
13 to the maintenance expense from the accounting
14 policy change. So it looks like maybe a clean
15 number would be something like \$58 million loss for
16 the third quarter.

17 Q By clean number you mean without the non
18 cash items?

19 A Well, it is still net income so that is
20 not, I am not trying to adjust everything for cash
21 but just at a high level. \$83 million just looking
22 at this, and without getting into a deep analysis,

1740

1 there is 13 million, that would be 70 and there is
2 another 12, so it looks like 58 million I think
3 would be maybe a better proxy.

4 Fuel was third quarter of '05.

5 Q What was fuel doing in the third quarter
6 of '05?

7 A Going through the roof.

8 Q All right. Let's call the next exhibit
9 G-6, and I think I have something on fuel in 2005.
10 Would you take one of these please and pass three to
11 the people on your left.

12 A Can I write on this?

13 Q Yes. We pulled this down over the break.

14 It shows fuel prices. Is this about what you recall
15 for fuel prices during 2005?

16 A I am very familiar with this chart.

17 Q Can you give us any kind of a percentage
18 on the increases in fuel from the start of 2005 to
19 the middle and end?

20 A Well, you know, ballpark let's call it 45
21 to 65, let's call it a, you know, 45 percent
22 increase. Or if you want to round to 50 we could

1741

1 round to 50.

2 Q So for airline that is huge?

3 A It is. The interesting thing, though, is
4 that if you look at the 2005 statement for America
5 West, aircraft fuel of \$800 million is 25 percent of
6 their operating revenues, so a big piece.

7 The really interesting thing that happened
8 in the industry was that starting shortly after this
9 chart in the first quarter of '06, airlines were
10 able to start to increase their prices. And you
11 know, you look at aircraft fuel at 25 percent of
12 revenue, a 40 percent increase in 25 percent would
13 mean 10 percent increase in America West's expenses.
14 I think you would agree with that.

15 So, if you have a 40 percent increase in a
16 line item that is 25 percent, 40 percent of
17 25 percent is 10 percent, you need to raise your
18 income by 10 percent to offset that, and in fact
19 yield ended up double digits in early 2006, so that

20 the airlines very quickly offset the rise in fuel
21 prices with yield improvements, which is the first
22 time they have been able to do that in about, in

1742

1 five years, that I am aware of.

2 Q In terms of the situation, in terms of
3 this issue, do you have Volume A still of our
4 exhibits?

5 A I do.

6 Q Would you flip to tab 34, please?

7 A Page 12.

8 Q This is the transcript of Doug Parker
9 talking to a group of pilots and flight attendants
10 in Phoenix on January 25, 2006. And he says,
11 starting at the top, we were looking at cash
12 balances at the end of this year it would have us
13 absolutely either needing to go raise a lot of
14 financing between --

15 A Where are you starting?

16 Q Page 12?

17 A At the top?

18 Q Where he says, "First off," at the top, it
19 is the second paragraph, and I jumped into that
20 paragraph and said, "we were looking at cash
21 balances at the end of the year that would have us
22 absolutely needing to either raise a lot of

1743

1 financing between when we closed the merger and year
2 end sometime in the fourth quarter or we would have
3 filed bankruptcy. I mean in our board room that was
4 the plan. It was the merger or file. There wasn't
5 really anything in between because we didn't have
6 enough cash."

7 He goes on to say we would quickly, if the
8 merger came apart go and try to go to the same
9 people and say, 'Look this is a good airline. How
10 much you do want to invest in it?' But it was
11 highly remote, I think, that would have happened.
12 So I think we would probably be in bankruptcy as we
13 speak. And in bankruptcy we'd downsizing and doing
14 all the stuff that other people do. So, that was
15 not a really nice scenario."

16 So are you saying that Doug Parker was
17 wrong when he was making these comments?

18 A Well, I think I am going to next the let
19 witness speaks to the responsibility Doug Parker had
20 in an SEC filing in talking to analysts, when he
21 said they had adequate liquidity and options, and
22 what his responsibility was when he made these

1744

1 statements at a point in time when he needs to tell
2 everyone is was a good idea.

3 And I also would submit the relevance of
4 this, if America West, if fuel prices spiked they
5 couldn't renegotiate the ATSB they would be filing

6 because their balance sheet had a problem. There
7 are still options, as opposed to having bleeding
8 money at the operating level. So even if he did
9 give any credence to this, which again I think it is
10 better left to the next witness, it is a different
11 set of circumstances.

12 Q Well, I am not really asking you about the
13 legal consequences of misrepresenting things
14 knowingly to your employees, which is what I
15 understand the next witness is going to cover. You
16 have made it perfectly clear that you are a
17 financial expert and not a legal expert?

18 A That is right.

19 Q So what I am asking you is whether you
20 have information that would cast doubt on the
21 accuracy of Mr. Parker's assertions --

22 A It is funny, because he is saying this

1745

1 after the fact, at a time when yields are improving,
2 and fuel prices, and have offset fuel prices, so,
3 you know, I think it is just difficult to say that
4 after the fact. I am not saying that he didn't have
5 discussions in the board room but I don't know the
6 relevance of this statement at this point in time.

7 Q I wasn't really asking you about the
8 relevance. You know Mr. Parker to generally be a
9 truthful and reliable person?

10 A As far as I am concerned, I do.

11 Q Let me just show you one other thing on

12 this point on, on the next page. If you flip to
13 page 13, where one of the pilots asked a question,
14 "As of right now how big is our bank account" and he
15 says \$2.6 billion.

16 And then going on from there he says
17 before this transaction America West had I guess, we
18 would have ended, I have forgotten the number
19 because it scared me so much, but it was less than
20 \$200 million. That is the figure you had, you had
21 \$178 million, so that is consistent with your
22 charts?

1746

1 A Yes, absolutely, absolutely.

2 Q Then he says, and then we had an \$80
3 million payment on January 2nd. And as far as you
4 are concerned is he truthful in saying that America
5 West had an \$80 million payment on January 2nd? Do
6 I know of anything that would contradict that?

7 A No, I don't.

8 Q So he says so we would be sitting here
9 today, we would have filed. And US Airways had, you
10 know, well -- let's forget about US Airways because
11 I am asking you about America West now?

12 A Except for the fact that they had \$500
13 million in the bank at that point in time in their
14 own financial statements that have already been
15 reported. I don't know how you make a hypothetical
16 --

17 Q At what point are you talking about?

18 A Before he made this statement his cash
19 balance is over \$500 million, so it is kind of a
20 silly statement for me to make sitting here today
21 with 500 today is where you would have been sitting
22 here today because you already knew you had \$500

1747

1 million.

2 Q He is talking on January 25th, 2006?

3 A Uh-huh.

4 Q And he says our bank account was 2.6
5 billion?

6 A Which is better than 500 million, but it
7 is also a bigger entity to support. But to say that
8 we would have been out of money, to say that
9 hypothetically, when there are statements out and
10 they actually have \$500 million as a stand alone, I
11 --

12 Q You don't know he said that?

13 A I don't know why he said that. I related
14 to my projection that I presented, it said they
15 thought they might only have 178, if that was true,
16 you know, yes, that would be bad. But this is after
17 that time period passed and they have \$500 million,
18 so I think it is kind of a funny statement to make.

19 Q Do you agree with what he said at the
20 bottom of the page where it is highlighted in
21 yellow, where he says for those of you guys that
22 have been around a long time it is certainly the

1 first time since I have been here, and I have been
2 here 11 years at America West, it is the first time
3 it was confident that you can look out and say I
4 know we are going to be around in two years, so that
5 helps you sleep at night.

6 So wouldn't you agree, based on
7 Mr. Parker's comments and based on your own analysis
8 of America West, that the America West shareholders
9 and the America West employees are far better off as
10 a result of this transaction than they would have
11 been absent the transaction?

12 A Well, I will speak for the shareholders,
13 absolutely. And it is hard for me to put myself in
14 the shoes of an America West employee but
15 shareholders, from a financial perspective they are
16 better off.

17 Q And part of it is this \$2.6 billion that
18 came in as a result of investors who were quite
19 ready to put up money to invest in the combined
20 airlines?

21 A Agreed, agreed.

22 Q Let's set this aside for a minute.

1 Exhibit 20, we were just talking about
2 that and I guess for the record I would like to ask
3 on Exhibit 20, I am sorry, it is page 20 and 21, I
4 keep calling it exhibit 20.

5 We would like to have a copy of whatever
6 was given to the America West MEC or merger
7 committee, if it was just this that is fine, if it
8 was something else we would like to see a copy of
9 it. And we don't need it today but when you can get
10 your hands on that we would like to see that.

11 A And that, what we have was provided as I
12 understand directly to Milestone. So it may or may
13 not matter, as you know there were a million
14 versions of this, it may or may not be exactly the
15 same as --

16 Q Right, so I am asking Jeff to have his
17 people search whatever files they have got and come
18 up with whatever they got from whatever source it
19 was and provide it to us?

20 MR. FREUND: It may well be that was
21 provided to Milestone as the America West pilots
22 financial advisor, directly to Milestone.

1750

1 BY MR. KATZ:

2 Q Oh, I see.

3 A I think we got it straight from the CFO
4 actually.

5 Q I see.

6 A If there is, I have never seen one that
7 came from the pilots, but as you know since there is
8 a million versions, there could be one.

9 Q I misunderstood what you said before then.
10 Maybe I should ask you then, or I should have asked

11 you this before, was there other information aside
12 from what is displayed here?

13 A We have a full package that relates to
14 this that we can supply to you.

15 Q Okay, I would say give that to Jeff and he
16 will give it to us and then we can see what it is,
17 and part of the reason for doing that is whatever
18 was given to you as the representative, you
19 Milestone as the representative of the America West
20 pilots, is not subject to these bylaws of the
21 creditors committee.

22 MR. FREUND: Correct.

1751

1 THE WITNESS: I don't think anyone has a
2 problem with that.

3 BY MR. KATZ:

4 Q Okay, good. In looking at this document,
5 page 20, I think you pointed out that the \$28
6 million negative is a fiction because you never get
7 to that point and you have to do something before
8 that.

9 A You have to do something before. You
10 really need to do something in here, and again this
11 is year end when you are low, but you need to do
12 something in end '05-'06. You are not going to let
13 yourself get to \$64 million either.

14 Q It is actually 105 million is right at the
15 ATSB minimum cash requirement, isn't it?

16 A That is probably true. I don't recall the
Page 135

17 exact minimum requirement, but that seems fair.

18 Q So, if it is 100 million, and I will show
19 you that figure in a minute.

20 A I would believe that.

21 Q You can't wait until you get to that point
22 either can you?

1752

1 A No. You know, which is 21 months off from
2 this time period, I am sorry, I am sorry, it would
3 have been maybe 17 months.

4 Q From July 2005, so if Doug Parker is
5 looking at it from July 2005 and he sees the 178
6 million and the 105 million a year later that may be
7 something that would be prompting board discussions
8 at America West?

9 A I would certainly hope so.

10 Q Let me show you what I promised you, it is
11 in your materials, if you take up your volume of
12 exhibits and turn this time to Exhibit 7 which is
13 truly tab 7, we have the 10-Q for America West for
14 the period ending March 31, 2005?

15 A Yes.

16 Q And would and if you turn in that document
17 to page 23?

18 CHAIRMAN NICOLAU: Which page?

19 MR. KATZ: 23.

20 CHAIRMAN NICOLAU: Thanks.

21 BY MR. KATZ:

22 Q It begins discussing the commitments of
Page 136

1 America West airlines?

2 A Yes.

3 Q And it mentions the \$429 million
4 government guaranteed loan?

5 A Well, actually the 420 million loan with a
6 \$380 million guarantee.

7 Q Okay.

8 A And when you get an ATSB loan there has to
9 be an unguaranteed portion as part of the
10 government's way to make sure there is someone with
11 a closer market interest to loaning money to the
12 company.

13 Q It starts describing the terms of the loan
14 down below, 10 installments \$42.9 million each.

15 A That is right.

16 Q And then it says that the rate is LIBOR
17 plus 40 basis points?

18 A That is right.

19 Q Is that a pretty high percentage?

20 A No, that is extremely low.

21 Q Compared to what they would get in the
22 market?

1 A Nobody borrows money at LIBOR -- well, I
2 won't say nobody. A market rate for sort of a

3 typical company might be a manufacturing company
4 might be LIBOR plus 250, LIBOR today is 5 1/2.

5 So this, just to put it in perspective, if
6 you had a LIBOR plus 40 basis point loan today you
7 would pay about 6 percent. Market would probably be
8 for a healthy company maybe 8, and for a stressed
9 company it might be a 11. So this is a great, it is
10 a phenomenal loan because of the government
11 guarantee.

12 Q So, Southwest would not get a LIBOR plus
13 40 basis points?

14 A They would not.

15 Q And then they also pay guarantee fees of 8
16 percent. This is something you that you would
17 calculate as an additional form of interest,
18 essentially?

19 A Effectively, yes.

20 Q Paying 8 percent of the loan balance every
21 year as a fee?

22 A Yes, that is a fair way to look at it.

1755

1 Q And then on the next page it says in the
2 paragraph it starts out, in addition, we were
3 required to prepay the government guaranteed loan
4 upon a change in control. That would be like a
5 merger, right?

6 A It would.

7 Q And we may be required to prepay portions
8 of the loan if our employee compensation costs

9 exceed a certain threshold. Does that mean that if
10 they give the pilots too big a pay raise that they
11 have to pay down part of the loan?

12 A It could mean a lot of things. Your
13 revenues could fall and cause your costs -- I don't
14 know whether it is based on percentage of revenue.
15 There is a lot of things that could happen, I am
16 sure, to make that go up.

17 Q You are not sure what the exact terms of
18 that are?

19 A I don't know whether it is a percentage of
20 revenue or it is an absolute dollar amount. I would
21 guess it is a percentage of revenue.

22 Q Then right after that in the next

1756

1 paragraph it says, "The government guaranteed
2 loan requires that America West maintain a minimum
3 cash balance of \$100 million"?

4 A Yes.

5 Q So that is kind of a hard stopping point
6 for this loan.

7 They also have another loan down below
8 that was negotiated in December 2004, just a few
9 months before this first quarter that you were
10 talking about the financial results of?

11 A Six months before, September, so I am
12 talking about -- it is April, October, November,
13 December, January, February; March would be the end
14 of the first quarter.

15 Q But the results you are talking about that
16 were released in April 20th which are the results of
17 the first three months of 2005?

18 A Yes, that would be six months after the
19 time period of September of '04.

20 Q I am sorry. It says at the bottom of page
21 24 in December 2004?

22 A Oh --

1757

1 Q America West raised additional capital --
2 oh, you were talking about the GECC loan?

3 A I thought we were still on GECC.

4 Q No, I was skipping over GECC, I am sorry,
5 and I was going down to the senior secured
6 discounted notes to 2009?

7 A Got it.

8 Q And it appears in December 2004 America
9 West raised additional capital by financing its
10 Phoenix maintenance facility and flight training
11 center using those two facilities as collateral.
12 Are you familiar with that loan?

13 A Indirectly.

14 Q And they raised \$30.8 million according to
15 page 24?

16 A That is right.

17 Q And then if you flip the page it says that
18 the notes require, I am now in the second sentence
19 of the top paragraph, the notes require aggregate
20 principal payments of \$36 million. So that they had

21 to pay back \$36 million for 30.8 million that they
22 borrowed. Is that unusual?

1758

1 A You could call it principal. It is
2 effectively really interest, another effective way,
3 it is interest, effectively. So yes, it is unusual.

4 Q And the fact is that they are down to
5 collateralizing the maintenance facility and the
6 flight training center. Do you know whether there
7 was any other collateral that America West Airlines
8 had at that point in December 2004?

9 A I have not done a full collateral
10 analysis. Our presentation was based on that they
11 have less leverage than other airlines able to raise
12 money, but I could not analyze the collateral --

13 Q So you don't know whether, for instance,
14 they had any airplane parts or spare engines that
15 hadn't already been pledged as collateral somewhere?

16 A I did not do that, no.

17 Q Then four paragraphs into that loan it
18 says the proceeds from this financing, which was the
19 30.8 million, together with 10.5 million from
20 operating cash flow, were irrevocably deposited with
21 the trustee for America West's 10 3/4 percent senior
22 unsecured notes due 2005, and subsequently redeemed

1759

1 on January 26th, 2005. So it sounds like they took
Page 141

2 that 41.3 million and then paid off 39.5 million in
3 these 10 3/4 percent senior notes which were coming
4 due?

5 A I would agree with that.

6 Q Isn't that indicative of a company that is
7 trying to get out from under impending, imminent
8 deadlines?

9 A It is actually interesting it is
10 indicative of a company that was able to still raise
11 financing to replace existing financing that was
12 expiring. Just as I propose they may have been able
13 to do with the ATSB loan.

14 Q But they had to put up collateral to do
15 that?

16 A I think they did. If you were going to
17 replace the ATSB loan you would put up collateral
18 that you are clearing with the existing ATSB,
19 although in this case that was unsecured.

20 Q The ATSB loan with America West was
21 unsecured?

22 A That is right.

1760

1 Q The US Airways loan had collateral for it?

2 A It did.

3 Q And that loan was paid down with the sale
4 of US Airways aircraft in 2005, wasn't it?

5 A I think that is right.

6 Q All right, this footnote goes on for
7 several pages and then on page, gosh, I don't see a

8 page number but it is the page after 26, has a whole
9 chart showing the various forms of debt that were
10 outstanding as of the end of the first quarter of
11 2005, for America West, right?

12 A That is right; well, this is -- yes, can
13 you restate that?

14 Q Well, why don't we do it this way. Why
15 don't you answer -- why don't you describe it in a
16 different way, if you any that my manner of
17 describing it was off a little bit?

18 A I may have just missed it.

19 Q How would you describe what is shown on
20 this page?

21 A This table represents your commitment to
22 the cash payments that you need to make to service

1761

1 various things, your long term debt as well as your
2 rental payments, lease payments, aircraft purchase
3 commitments, which is a huge component, it is
4 actually a little over 40 percent of the number.

5 Q Do you know whether these numbers were
6 critical to your cash position, I take it, whether
7 they had been increasing?

8 A Well, clearly they are scheduled to
9 increase in '06 from '05. I don't know what the
10 2004 number was.

11 Q Let me show you two documents I would like
12 to have marked as exhibits G-7 and G-8, I called the
13 earlier one G-7.

14 G-7 is the 2003 annual report, and just
15 looking at the 2005 column --

16 A Okay.

17 Q This sets forth the cash obligations as of
18 December 31, 2003?

19 A Yes, of 609 million.

20 Q Right, pretty close to 610 million?

21 A In '03.

22 Q Right.

1762

1 A For '05, as opposed to the 2005 10K when
2 it is trimmed down to 533 million from 609 million.
3 Am I looking at the right --

4 Q Well, the 609 million is the number I was
5 looking at for 2000 --

6 A 609 million was the payment. As of
7 December 31, 2003, they expected to make 609 million
8 payments to satisfy these obligation in 2005. Is
9 that -- would you agree?

10 Q Yes.

11 A Then two years later they only expected to
12 make 533 million or they only did make, they only
13 expected to make 533 million, so it came down by 70
14 million.

15 Q Let's take it one step at a time if I
16 don't mind?

17 A Okay.

18 Q In G-7 and the 609 million, let's go to
19 G-8, which is a year later, the cash obligations as

20 of December 31, 2004 --

21 MR. FREUND: I don't think I have G-8.

22 THE WITNESS: It is page 34.

1763

1 BY MR. KATZ:

2 Q Page 34 of the 2004 annual report.

3 The 2005 column, a year later, shows that
4 they were obligated, America West was obligated to
5 pay 803 million in 2005 for its various debts and
6 other obligations. Am I reading that correctly?

7 A You are.

8 Q So it was going off approximately \$200
9 million during the course of 2004?

10 A Projection.

11 Q The projection of what is going to be --

12 A That is very important.

13 Q The projection of what obligations are
14 going to come due in 2005 as has increased by \$200
15 million?

16 A It did in 2004, but it came down, it came
17 down by 70 million in 2005.

18 Q This is where you want to keep going?

19 A Because I am --

20 CHAIRMAN NICOLAU: And why not?

21 THE WITNESS: I can go along but it is
22 hard when something is being mischaracterized,

1764

1 because you asked me to state was it rising. In
2 fact from '03 to '05 the expected payments in '05
3 came down.

4 So, I just wanted to make sure it was
5 expected in '03 to be 609 million in '05, but as of
6 March 31st it was only going to be 533 million, so
7 it is coming down.

8 BY MR. KATZ:

9 Q But hadn't they made some payments during
10 the first three months of 2005? This is a March 31,
11 2005 statement, and they still owed 533 million for
12 the last nine months of the year?

13 A So what did they pay in the first three
14 months of the year?

15 Q Maybe a \$103 million, I don't know. You
16 will have to look that up, I guess. It is somewhere
17 in the 10-Q isn't it?

18 A We could go back.

19 Q Let's go on and look at 2006?

20 A Right.

21 Q And go back to G-7, please.

22 A You need to go by years; G-7 is the '03.

1765

1 Q It is the '03 annual report, shows for
2 2006, 670 million in debts that are going to come
3 due?

4 A Yes.

5 Q And that goes up in the next year to 905

6 million, an increase of 235 million, approximately?

7 A G-7, 670 goes up to 905.

8 Q So that is an increase of 235?

9 A Which is all related to aircraft purchase
10 commitment, which is something that gets
11 renegotiated every single day in the airline
12 industry.

13 Q And let's just finish off this train of
14 thought and then come back to that, because if you
15 look at your Exhibit 7 which is the 10Q for the
16 first quarter of 2005, it has gone up again to 926
17 million; is that right?

18 A Yes, that is correct.

19 Q Including a piece of that related to
20 aircraft purchase commitments?

21 A That is correct.

22 Q And isn't one of the ways that airline

1766

1 deals with this by, when there are lease expirations
2 throughout the year as America West has, the airline
3 takes advantage of that and returns the airplanes to
4 the lessor to reduce the obligations on the risks.

5 A Could be.

6 Q And that is in fact one of the things that
7 America West did in the second half of 2005 in order
8 to reduce its cash expenses and increase the cash
9 balance; isn't that correct?

10 A I haven't done the analysis but I wouldn't
11 disagree with you, if you say that.

12 Q Let me just show you a document that I
13 think lays that out.

14 CHAIRMAN NICOLAU: The witness said he
15 didn't disagree with you, Mr. Katz.

16 MR. KATZ: Okay, then I won't compete with
17 you.

18 MR. FREUND: That would be very difficult.

19 MR. KATZ: I guess on that note I would
20 say I ought to take a five-minute break and see
21 whether I have finished everything.

22 CHAIRMAN NICOLAU: Okay.

1767

1 (4:42 p.m. -- recess -- 4:52 p.m.)

2 MR. KATZ: I have no further questions.

3 CHAIRMAN NICOLAU: Very good. Any
4 redirect?

5 MR. FREUND: No, no further questions.

6 CHAIRMAN NICOLAU: Okay. Board members?

7 MR. BRUCIA: No, sir.

8 CHAIRMAN NICOLAU: Thank you very much.

9 MR. GILLEN: At some point are you going
10 to tell us about Queensland?

11 THE WITNESS: Yes. Now would be a good
12 time, I will give you the real short version while I
13 am getting up.

14 (Discussion of record).

15 MR. FREUND: You probably want me to call
16 another witness.

17 CHAIRMAN NICOLAU: Why not.

18 MR. FREUND: Call Professor Haft.

19 Whereupon,

20 ROBERT J. HAFT

21 was called as a witness and, having first been duly

22 sworn, was examined and testified as follows:

1768

1 DIRECT EXAMINATION

2 BY MR. FREUND

3 Q Good late afternoon, Professor Haft?

4 A Thank you.

5 Q We will try to move through fairly
6 quickly, through your testimony. Let me begin by
7 asking you where you are presently employed?

8 A Georgetown University Law Center.

9 Q And how long have you been employed at
10 Georgetown University law school?

11 A 29 years.

12 MR. KATZ: If it will expedite things the
13 US Airways merger representatives are prepared to
14 stipulate that Professor Haft is an expert in
15 corporate securities law.

16 MR. FREUND: I appreciate that. That will
17 expedite things.

18 THE WITNESS: I appreciate that, too.

19 BY MR. FREUND:

20 Q But I am, notwithstanding that I am going
21 to ask you a couple of questions about some of your
22 recent retentions in corporate securities matters.

1 Could you just give us some of the highlights that
2 those of us in the room may actually know something
3 about?

4 A Well, I am the expert witness for the
5 defendants, the deep pocket capitalist defendants in
6 Enron and was in WorldCom, I think for JP Morgan,
7 Chase, Goldman Sachs, Lehman Brothers, all the major
8 banks in the United States that were in both of
9 those litigations.

10 I also was the expert witness for the
11 Securities and Exchange Commission a good number of
12 cases including one case where they recovered the
13 largest civil judgment against an errant securities
14 law violator in the hundreds of millions of dollars.
15 It is still their largest single case.

16 And one other one, I was kind of honored,
17 that Sullivan & Cromwell, which is as we all know,
18 lawyers do, one of the two or three very best firms
19 in the securities and corporate field, engaged me as
20 an expert witness in a suit alleging malpractice
21 against them with respect to securities law opinion.

22 CHAIRMAN NICOLAU: Since he went to the

1 best law school in the country --

2 THE WITNESS: Yes, 1954, yes.

3 CHAIRMAN NICOLAU: 1951 here.

4 THE WITNESS: No kidding. Well, our class

5 has got the reputation, not to challenge you, for
6 the largest number of law teachers that graduated
7 from that law school in 1954. We have got about six
8 that are currently teaching.

9 CHAIRMAN NICOLAU: I prefer to talk about
10 professors that we both had.

11 THE WITNESS: Yes; yes, they get to sound
12 better and they are better as the time goes by,
13 isn't that right?

14 CHAIRMAN NICOLAU: That is correct.

15 BY MR. FREUND:

16 Q Just to sort of tighten up the record, you
17 have in front of you a volume of exhibits that are
18 called America West arbitration exhibits Volume B
19 and if you turn to tab 8, will you just identify
20 what tab 8 is for the record?

21 A That is my CV that I sent to you, that I
22 prepared.

1771

1 Q And it contains in addition to your
2 employment it contains publications, speeches, and
3 in particular starting at page, well starting after
4 page numbered 6, those engagements in which you were
5 retained as an expert witness; is that correct?

6 A Yes.

7 Q Professor Haft, I think that the best way
8 to proceed is to pretend that we are in one of your
9 classes at Georgetown Law School, and turning to tab
10 No. 9, ask you first of all to tell us as a general

11 matter what it is that appears behind tab No. 9; and
12 secondarily, to have you refer to those, to whatever
13 extent you feel is useful, describe to the panel
14 what legal obligations the securities laws place on
15 corporate executives with respect to statements they
16 make, either in writing or otherwise, concerning the
17 financial condition of their companies?

18 A Well, I think I can do it almost in three
19 sentences, what all of this adds up to. Although I
20 tend to extend it through 13 weeks of classes.

21 Q The students would want to feel they got
22 there money's worth, after all.

1772

1 A Any corporate official that makes a
2 material misstatement related to securities trading
3 is guilty of a federal crime, also incurs personal
4 civil liability and lastly, under this statutes
5 here, can be permanently barred for the rest of his
6 or her life from acting as an officer or director of
7 any public company. The SEC has that power after
8 notice and hearing; a permanent bar.

9 If anybody is interested in the particular
10 sections I would be happy to point them out to you,
11 but basically the corporate official cannot make a
12 material misstatement which is related to securities
13 trading.

14 Q Are those statutory obligations limited to
15 filings that are made formally with the Securities &
16 Exchange Commission?

17 A No, they also include and align with a
18 number of these statutes, talk about material
19 misstatement made in connection with the purchase or
20 sale of a security. Specifically it has been held
21 time and time again it is both oral and written
22 statements that are not in filings, they are in

1773

1 press releases, in publicly disseminated materials
2 that is aimed at the investing public. That is the
3 key to it.

4 Q Now, in connection with your testimony
5 today I asked you to review, let's see if we can't
6 get the exhibit numbers, several documents, one of
7 which has already, all of it has been introduced
8 into evidence, one of which is a final transcript of
9 an analysts call by America West executives
10 following the release of first quarter reports. It
11 is not in your book. Actually if you turn to --
12 let's see if that is, that denominated as --

13 A Volume A.

14 Q Yes, if you turn to tab 5 of Volume A?

15 A Yes.

16 Q Did I ask you to review that document?

17 A Yes.

18 Q And in addition if you turn to tab 6 of
19 that volume I will tell you that is a form 8-K filed
20 on April 20th, 2005. Is that a document I also
21 asked you to review?

22 A Yes.

1 Q And then finally I asked to you review the
2 document that is behind tab 7 which is the form 100
3 for the period ending, America West for the period
4 ending March 31st, 2005. Did you review that
5 document as well?

6 A Yes.

7 Q And then last but not least, I think you
8 have volume -- no, you don't have the volume I want
9 you to look at.

10 I had you review a transcript, a
11 transcription of statements made by Doug Parker, CEO
12 of America West-US Airways in 2006 in Phoenix?

13 A Yes.

14 Q Now, staying with the documents that are
15 contained in the exhibit book that are behind tabs
16 5, 6 and 7, that is the transcript of the analysts
17 call, the 10Q, the 8K and the 10Q, I guess let's
18 start with the analysts call.

19 To be clear, that falls, those statements
20 that are contained in that document fall within the
21 legal framework that you described; is that correct?

22 A Oh, clearly so. Statements to analysts

1 which are clearly intended to be conveyed, everybody
2 understand that, to the investing public.

3 Q All right. How about the statements made
4 in January of 2006 by Mr. Parker to the America --
5 to the pilots in Phoenix? To the extent that those
6 statements were discussing the past performance of
7 America West Airlines, were those statements
8 regulated by those securities laws?

9 A Definitely not.

10 Q Can you explain to the panel why that is
11 so?

12 A For two reasons, every single one of the
13 statutes and rules that are contained in tab 9
14 require that the misstatement must be material, or
15 else it is not covered by the federal securities
16 laws.

17 And secondly, they require that the
18 statement be made in connection with the purchase or
19 sale of a security. It is all or related to a
20 securities transaction.

21 Now, taking the first part, either
22 satisfying either one of those, that is if it is not

1776

1 material, the securities laws do not apply. If it
2 is material but not made in connection with
3 securities trading, the securities laws do not
4 apply.

5 Now, I believe that the statements in this
6 transcript and the ones that are, I mean we have to
7 pinpoint the ones that I think I heard the last
8 witness, is that right, Mr. Kaplan --

9 MR. KATZ: Katz, yes.
10 THE WITNESS: I am sorry, Mr. Katz. What
11 page is that on?
12 MR. KATZ: 12 to 13.
13 THE WITNESS: That is all I am looking at,
14 is the statement.
15 MR. KATZ: Jeff, I think he has the wrong
16 book.
17 THE WITNESS: You are in book C, the
18 exhibit is in Volume A?
19 MR. FREUND: Yes, I am sorry. I showed
20 you the wrong transcript.
21 MR. KATZ: Your lawyer is trying to trick
22 you.

1777

1 THE WITNESS: Oh, this has got yellow
2 marks on it. Okay, all right.
3 BY MR. FREUND:
4 Q There we go.
5 A Yes, now the statements on pages 12 and 13
6 which is the ones that I focused on, in tab 34, all
7 relate to past facts of a company that is no longer
8 in existence, in fact it has been merged in, that is
9 America West, and the figures have all been merged
10 into a final financial statement after this date.
11 The securities laws do not focus on past
12 history, and for good reason. That is not just a --
13 some sort of requirement, it is the idea that the
14 securities markets as a whole, securities analysts,

15 investors, are no longer interested in the past as
16 incorporated in financial statements. They are
17 interested in what is coming in the future, what is
18 the best assessment of future events, that is what
19 drives securities prices.

20 This is all about the past history. So it
21 is not material for that reason, those reasons.

22 The connection with securities trading,

1778

1 the second prong, is clearly absent. These are
2 conversations, I am led to understand, I have been
3 supplied, if I am wrong on my assumptions, that this
4 is a transcript of statements made to airline pilots
5 and some other employees in their roles as airline
6 pilots and, therefore, not in connection with the
7 trading of any security.

8 And by that time, that is January 9th,
9 2006, there was no longer any America West
10 securities out there at any event, so it could not
11 be in connection with the purchase or sale of an
12 America West security. So on both grounds, the
13 securities law, both or either, the securities laws
14 would not apply, the federal securities laws.

15 Q The second part of your answer in a sense
16 trumped a question that I was about to ask you. At
17 various times in examining other witnesses Mr. Katz
18 has said well, some of the pilots may very well, to
19 whom he spoke, may very well have been shareholders
20 in America West. Would that change your assessment

21 of applicability of the securities laws?

22 A No, because the speaker has to have the

1779

1 intention of affecting the investing public, which
2 means two things. This was a closed meeting, I take
3 it, rather than -- and was not disseminated to the
4 investing public. It was made -- that is it.

5 So it was made to a group of employees
6 that in some form of privacy, rather than intended
7 to be conveyed to the investing public as, for
8 example, the analysts statements in April of 2005
9 clearly with that in mind and certainly the filing
10 of the 10Q.

11 Q In addition to pick up on something that
12 you said in answer to my previous question, even if
13 it was intended to be distributed to the investing
14 public at large, was the fact that there was no
15 longer a U.S. -- I am sorry, an America West
16 security to trade in, would that have affected the
17 question of whether this statement would have been
18 covered by the securities laws?

19 A That is right. That, plus again it was
20 not material at that time.

21 Q Now, I am going to say a couple things
22 that I am not going to ask you to opine on, before I

1780

1 ask the question that I am going to ask you to opine
Page 158

2 on.

3 And that is I am not going to ask you
4 either to give your opinion about what America
5 West's liquidity position was or was not at a given
6 point in time. Nor, am I going to ask you to try to
7 interpret the words of Mr. Parker when he made the
8 statement, statements to the pilots in January
9 of 2006.

10 But I do want to pose to you a
11 hypothetical in your capacity as an expert. Sitting
12 here today, if one were to understand Mr. Parker's
13 statements to the pilots in January of 2006 to
14 reflect his belief that he actually held in April
15 of 2006, and if those statements were inconsistent
16 with the statements that he made in the analysts
17 conference or in the 10-Q, regarding America West's
18 liquidity, would Mr. Parker's statements in April
19 have subjected him to criminal and/or civil
20 consequences under the securities laws?

21 A I think you are --

22 Q That was a bad, that was a long, drawn out

1781

1 question.

2 A If I can -- if I can attribute the state
3 of mind that he is trying to tell us, or that you
4 are asking me, that he knew in April 2006 that they
5 would either have to go into bankruptcy or get
6 refinancing --

7 CHAIRMAN NICOLAU: 5, 2005.
Page 159

8 MR. FREUND: 2005.

9 THE WITNESS: 2005. If that is what he
10 knew, or strongly believed as the CEO, in
11 April 2005, and he nevertheless made the statements
12 in, to the financial analysts in April 2005, and
13 made the statements that he does make in the 10Q for
14 the first quarter of 2005, would he have violated
15 the securities laws, the ones I refer to, and the
16 answer is clearly yes.

17 He would have been subject to a minimum of
18 20 years in prison under Section 906 of
19 Sarbanes-Oxley, and a creative prosecutor could,
20 because he certified the 10Q four times in four
21 capacities, could go to jail for 80 years, and be
22 subject to all sorts of fines.

1782

1 He would clearly be barred by the SEC from
2 any, I think, not predicting but knowing SEC policy,
3 be barred from acting as an officer or director of
4 any public company for the rest of his life.

5 BY MR. FREUND:

6 Q Does the same hold true with respect to
7 the statements to the analysts in April of 2005 to
8 the extent that again not asking you to interpret
9 his words, but if one were to understand the words
10 that he spoke to the analysts about his view of
11 liquidity, America West's liquidity, if in fact he
12 held contrary views in April 2005 different from
13 those that he expressed to the analysts, would the

14 securities laws have the same applicability to those
15 statements?

16 A Yes, I think I covered that in my last
17 statement.

18 CHAIRMAN NICOLAU: Yes, you did.

19 THE WITNESS: That is the 10Q and the
20 financial analysts.

21 MR. FREUND: Thank you, I have no further
22 questions.

1783

1 CROSS EXAMINATION

2 BY MR. KATZ:

3 Q I can't resist the opportunity to ask one
4 or two questions.

5 CHAIRMAN NICOLAU: Nothing about the
6 University of Chicago Law School.

7 BY MR. KATZ:

8 Q Nothing about my alma mater.

9 There is nothing in what you are saying,
10 professor Haft, is there, that would prevent
11 Mr. Parker from telling the truth in January 2006,
12 is there?

13 A Well, I think he subjects, if that is a
14 truthful statement the way that Jeff asked me to
15 assume to interpret this statement, that is
16 completely undercut his statements in the 10Q and
17 financial and the statements to the financial
18 analysts and constituted an admission of knowledge
19 in April 2005 that those statements he made at that

20 time were materially false, that a prosecutor could
21 simply take this transcript and indict him.

22 I mean I don't see how anybody who was,

1784

1 now I am going beyond the expertise, so you can
2 delete this, anybody who is sane or sensible would
3 countenance such a position.

4 Q Are you -- is it part of your testimony
5 that the statements in the U.S. Air pilots Exhibit
6 A-34 pages 12 and 13, are in fact inconsistent with
7 statements in the transcript of conference call with
8 analysts in April of 2005?

9 A No. I have been asked to assume that they
10 are, that is I think that Jeff's question was, and I
11 understood it to be, he said there are a number of
12 ways of interpreting this, but assume as a law
13 school professor's hypothetical that they were a
14 declaration of what his intent and knowledge was in
15 April 2005, that is the assumption I am operating
16 under.

17 I don't think I am going to be helpful to
18 you at all or for the panel for me to interpret
19 English that we all can read, and I have no more
20 special expertise than anybody else in reading the
21 language.

22 Q You are not testifying, are you, professor

1785

1 Haft, that statements by an executive of a company
2 are exempt from the securities laws when they are
3 speaking to employees as a general matter, are you?

4 A No, there are a number of situations,
5 remember the test is the intent, the test -- the
6 full test is that the statement, this is the test
7 that is used now throughout the United States, that
8 has been adopted by the Supreme Court.

9 It was a test in the Texas Gulf Sulfur
10 case in the Second Circuit that was famous to all of
11 us law school people for the insider trading aspects
12 of that case. But Part II of that case had to do
13 with a false press release by Texas Gulf Sulfur
14 where they were saying well, we didn't find that
15 much sulfur, trying to calm the market down while
16 the insiders are buying it up.

17 That false press release, the defense of
18 Texas Gulf Sulfur was it was not in connection with
19 the purchase or sale of a security, it was just a
20 press release, and the Second Circuit held that any
21 communication, now I am quoting from the case,
22 "reasonably calculated to influence the investing

1786

1 public, close quotes, is made in connection with the
2 purchase or sale of a security.

3 Q Now, let me follow up with this question.
4 How big of an investing public needs to be involved
5 in order for the securities laws to apply? If I am

6 an executive of a public company and I am speaking
7 to a hundred people who are potential investors --

8 A In --

9 Q Is that enough?

10 A In a security.

11 Q What I am talking about is the purchase or
12 sale of securities, and I am attempting to make a
13 material misstatement to influence those people. Is
14 the fact that there is only a hundred people and
15 they are my employees, does that make a difference?

16 A If that is the situation we would then
17 have to look to see whether it is likely that
18 statement, in the context that it was made, is one
19 where the employees are going to go out and tell
20 other people or trade the security themselves.

21 Here, as I said, there is no more America
22 West, there is no more America West security by

1787

1 2006, there is nothing. There is nothing to trade
2 then.

3 He is telling them about what one
4 component that they are totally absorbed into a
5 company by now, where the financial statements are
6 really all combined now, what happened in a past
7 period of time in April or whatever was America
8 West's situation. There is no more America West
9 security.

10 Q Professor Haft, take a look at page 13
11 please?

12 A Yes.

13 Q And at the top there is a question from
14 one of the pilots who attended this brown bag lunch?

15 A Uh-huh.

16 Q And he says as of right now how big is our
17 bank account and how good is our credit, if
18 Mr. Parker makes an intentional material
19 misstatement about those points, with the intent of
20 affecting the buying and selling of securities --

21 A U.S. Air securities.

22 Q U.S. Air securities, is that covered?

1788

1 A Well, then we would have to, not
2 automatically, we would have to look, we have a
3 hundred employees and we feel that they are going to
4 not only buy or sell themselves but go out and
5 spread the news, that is the test.

6 So that it is reasonably calculated to
7 influence the investing public. It has got to be --
8 it has got to be equivalent to something that is
9 broadly disseminated.

10 Now, just so that, oh -- let me finish
11 this up so that you see that it is not completely
12 the -- we can, if I, there are two kinds of fraud,
13 one is the public misstatement which is calculated,
14 as I said, to go out to the public and influence the
15 stock price in general.

16 There is another kind of securities fraud
17 that is covered by these statutes that we see here.

18 If I make a misstatement to you, just the two of us
19 sitting in a bar or something, and you buy my stock
20 from me, a stock in U.S. Air, you -- I have violated
21 the securities laws. That is where I am trying to
22 obtain money or property from you by reason of false

1789

1 statement.

2 Q Would that apply to a CEO?

3 A If he was selling his stock to the
4 employees or buying it from them, yes. It would be
5 an individual thing, both criminally and civilly.

6 Q Let me just get this straight. If he is
7 talking, if the CEO is talking to a group of a
8 hundred pilots, but there are two thousand pilots,
9 and the intention is that the 100 are going to go
10 out and talk to the another they are 1900 and spread
11 the word of whatever was said --

12 A Reasonably calculated. Doesn't even have
13 to be intention. If the situation, just to aid your
14 hypothetical from your point of view.

15 Q Please.

16 A Is the speaker doesn't have to intend the
17 way we think about it in a criminal law, to pull, if
18 it is reason, that is the objective test, when you
19 look at this statement in the context in which it
20 was made, was it reasonably calculated to influence
21 the investing public.

22 Q All right. Now, I think you answered that

1 question, so I am going on to the next question.
2 Suppose the CEO is in negotiations with the pilots
3 about a new collective bargaining contract, and as
4 part of the new collective bargaining contract the
5 pilots are going to want a pay raise, and the CEO is
6 going to want them to take part of the pay raise,
7 instead of in cash, in securities of some form in
8 the company that he is the CEO of, and he says
9 things that are material misstatements with regard
10 to those securities?

11 A You mean U.S. Air securities?

12 Q It would be some form of U.S. Air
13 securities at this point, because there are no
14 America West securities left anymore.

15 A All right, so the fact relates to the
16 combined companies?

17 Q That is right. Would that be covered by
18 the rules that you are talking about?

19 A It may or may not be. Again, it is not
20 covered in the face to face kind of transaction,
21 where I am selling to you.

22 Q Because he is not selling his own personal

1 stock?

2 A Yes exactly, nor is the company making an
3 offering of stock. He says he is a representative
4 of the company, if the company were making an

5 offering to employees, stock options and so on, made
6 material misstatements in that context, there would
7 also be liability.

8 That is the face to face fraud. But, we
9 are focusing on with these kind of statements is
10 the, like the analysis to the false press release,
11 where you make a statement which itself is a press
12 release and everybody who has got it, or one where
13 you make to it a group where it is reasonably
14 calculated to get out to the investing public and
15 influence the stock price; but there is no more
16 America West security, in our situation.

17 Q So in the situation I just asked you
18 about, if the CEO is making misrepresentations in
19 order to foist company securities onto the pilots he
20 is talking to as a group --

21 A The US Airways, that would be covered.

22 Q All right. Another slightly different

1792

1 take on this. The materials that you have reviewed
2 regarding first quarter performance in 2005 of
3 America West?

4 A Yes.

5 Q Came out about April 20, 2005. A month
6 later, May 19th, 2005 the formal papers for the
7 agreement to merge were signed. If at some point
8 during that month Mr. Parker sees the price of fuel
9 going up, he has other things that affect his
10 thinking, and he decides at that point that it is

11 better to sign the merger agreement because he
12 doesn't want to take the risk of running out of cash
13 later in the year, and that is what he has
14 described, if that is what he is describing in the
15 transcript that you reviewed, that has got the
16 yellow highlights on it, has he committed securities
17 fraud in the April statements to analysts and in the
18 10Q if he didn't have any intention to misrepresent
19 the material facts on April 20th?

20 CHAIRMAN NICOLAU: I wish I could
21 understand that.

22 MR. KATZ: Let me put it a different, let

1793

1 me ask it a different way. It doesn't make any
2 difference whether I understand it or even the
3 witness understands it, if the board doesn't
4 understand.

5 MR. FREUND: Well, it would help if the
6 witness understands it. We have to start there.

7 BY MR. KATZ:

8 Q What about, we have got April 20th he is
9 making certain statements?

10 A On April 26.

11 Q Then he has made some other statements in
12 January of 2006, and those look back to some earlier
13 time, and assume that something happened between the
14 time April 20th or 26th and the time that I was
15 referring back to, whenever that was, later in 2005.
16 Does that avoid any potential liability for

17 Mr. Parker in April as a result of his April
18 statement? Is that clearer?

19 CHAIRMAN NICOLAU: Well, but he hasn't
20 made any statements from April to May, and the whole
21 premise is a statement that is materially
22 misrepresenting things.

1794

1 THE WITNESS: This is still alive. This
2 is a question of what the life of a material
3 misstatement is, and it is clearly alive. In my
4 view right through the September closing, actually,
5 because it was never stated or corrected.

6 BY MR. KATZ:

7 Q What I am asking is, I guess it is really
8 a question about the English language rather than
9 securities law. What I am saying is, in
10 January 2006 he is making retrospective statements
11 about some earlier point in time?

12 A Uh-huh.

13 Q He doesn't say exactly what earlier point
14 in time. If the earlier point in time is later than
15 April 20th or April 26th and the circumstances have
16 changed in between, does that affect your analysis?

17 CHAIRMAN NICOLAU: Well, if he knew
18 something after the 26th that would affect the
19 investing public and didn't disclose it, what would
20 be the result in terms of law?

21 THE WITNESS: Okay. If it materially
22 affected it. Actually the law is that it is unclear

1 in that area. That is called the duty to update.
2 And we assume that the original statement is alive
3 until there is a correction. But you can't nail
4 that down as clearly as the, as what I have said
5 before on the other contingencies.

6 BY MR. KATZ:

7 Q What is it necessary to do to update and
8 therefore satisfactorily --

9 A That is a good question. The answer is
10 you have got to again have a press release or some
11 sort of thing that is going to go out to the
12 investing public rather than just telling a few
13 people, or even a hundred people in the room. You
14 would have to do the equivalent, and in case of
15 corrections, you would have to do the equivalent of
16 the dissemination you did on the original false
17 statement.

18 So you would have to do it and correct
19 your 10-K, amend your 10-K, send something to
20 financial analysts or send them something.

21 Q Do you have an opinion about whether in
22 pages 12 to 13 of this exhibit A 34, Mr. Parker is

1 telling the truth or not?

2 CHAIRMAN NICOLAU: You know, Dan, he

3 already answered a version of that question, and I
4 don't know that professor is any more an expert than
5 we are in terms of that kind of issue.

6 MR. FREUND: I made it clear I wasn't
7 asking him either to interpret that nor was I asking
8 him his opinion on America West's actual liquidity
9 position at any point in time.

10 MR. KATZ: Okay. I have nothing further
11 for professor.

12 CHAIRMAN NICOLAU: Any redirect?

13 MR. FREUND: No, I have nothing further.

14 CHAIRMAN NICOLAU: Wait, don't go away.
15 The board has no questions, thank you,
16 Professor.

17 THE WITNESS: Thank you.

18 MR. FREUND: Thank you.

19 THE WITNESS: Thanks.

20 MR. FREUND: I think we will call it a
21 day.

22 CHAIRMAN NICOLAU: Okay. What happens

1797

1 tomorrow?

2 MR. FREUND: We will have more witnesses.

3 CHAIRMAN NICOLAU: Can you let Mr. Katz
4 know who they are?

5 MR. FREUND: I have given you a list of
6 witnesses.

7 MR. KATZ: What about tomorrow?

8 MR. FREUND: I have given you a list of

9 virtually all of our witnesses, although there may
10 be a Friday witness that I haven't yet identified.

11 But tomorrow we will begin with Doug
12 Dotter and actually you already have his exhibits in
13 the exhibit book that was distributed. That was
14 entirely unintentionally but you can spend all night
15 parsing them if you like.

16 We will follow Doug Dotter with Lee Fife,
17 and assuming that we are still going after that we
18 will follow, I believe our present intention is we
19 will follow Lee Fife with Kevin Kerr and I think
20 that will probably be our day for tomorrow.

21 CHAIRMAN NICOLAU: Okay. And then some
22 witnesses on Friday as well, you said.

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1 MR. FREUND: Some witnesses on Friday as
2 well, and as I told you a witness on Monday or two
3 on Monday.

4 MR. KATZ: Before we leave today you are
5 going to give us that stuff about computers.

6 MR. FREUND: Yes, I have that right here.

7 MR. KATZ: Good.

8 CHAIRMAN NICOLAU: Do you want this on the
9 record.

10 MR. FREUND: Oh, I suppose we might as
11 well.

12 CHAIRMAN NICOLAU: That document is what?

13 MR. FREUND: As we had asked the panel to
14 direct America West pilots to provide us with what I

15 call the black box, Dan asked whether we were going
16 to have a black box as well as if we were, whether
17 we were going to provide the black box to the to US
18 Airways pilots.

19 CHAIRMAN NICOLAU: And within that envelope
20 is the black box?

21 MR. FREUND: Within that envelope and this
22 CD case is that black box together with a

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1 confidentiality agreement, which you will find
2 strikingly familiar, which was cribbed. There was
3 no confidentiality agreement --

4 MR. KATZ: It was not copyrighted either.
5 I stole it from somebody else fair and square --

6 MR. FREUND: All I am trying to say is you
7 don't have to read it, on the assumption that if you
8 sign it you will use it in precisely the same terms.
9 What I am going to give you --

10 MR. KATZ: Right.

11 MR. FREUND: -- are multiple pages of
12 hieroglyphics which I am sure Rick will enjoy
13 reading, as well as a CD.

14 MR. KATZ: That is great. Thank you.

15 CHAIRMAN NICOLAU: What time tomorrow,
16 gentlemen?

17 MR. FREUND: I would like to say
18 10 o'clock.

19 (Discussion off the record).

20 CHAIRMAN NICOLAU: Very good, recess until

21 tomorrow at 10:00.

22 (Whereupon, at 5:35 p.m., the hearing was recessed,

1800

1 to be reconvened at 10:00 a.m., on Thursday, January
2 11, 2007.)

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3 WITNESS DIRECT V/D CROSS REDIRECT RECROSS

4 RAYMOND E. ALBERT 1591 1656 1672

5 1660

6 ROBERT J. HART 1768 1783

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